

PEP Gateway Co-investment Investors Administration Pty Limited in its capacity as trustee of
Pacific Equity Partners Gateway Co-investment Trust
PEP Gateway Management Pty Limited

Supplemental Deed

Amending the Trust Deed of Pacific Equity Partners Gateway Co-investment Trust

This Supplemental Deed is made on 28 November 2023

Parties

- 1 **PEP Gateway Co-investment Investors Administration Pty Limited** (ACN 655 543 105) of Level 31, 126 Phillip Street, Sydney, New South Wales, Australia 2000 in its capacity as trustee of Pacific Equity Partners Gateway Co-investment Trust (**Trustee**).
- 2 **PEP Gateway Management Pty Limited** (ACN 655 960 795) of Level 31, 126 Phillip Street, Sydney, New South Wales, Australia 2000 (**Manager**).

Recitals

- A The Trustee is the trustee of the Trust and the Manager is the manager of the Trust.
- B The Trustee is proposing to amend the Trust Deed.
- C Under clause 16(a) of the Trust Deed, the Trust Deed may be amended unilaterally by the Trustee if the Trustee determines that the amendment is in the best interests of Unitholders as a whole and would not expose the Trustee or the Trust to liabilities or risks the Trustee deems unacceptable.
- D Under clause 16(b) of the Trust Deed, any amendment of the Trust Deed must be effected by supplemental deed.

It is declared as follows.

1 Definitions and interpretation

1.1 Definitions

Capitalised terms used in this Supplemental Deed (including the Recitals) and not otherwise defined herein shall have the meaning given to those terms in the Trust Deed.

In addition, the following definitions apply in this Supplemental Deed:

Schedule means the schedule to this Supplemental Deed.

Trust means the Pacific Equity Partners Gateway Co-investment Trust.

Trust Deed means the trust deed of the Trust, dated 12 August 2022, as amended from time to time.

1.2 Interpretation

Paragraph 2 (*Interpretation*) of Schedule 1 (*Dictionary*) of the Trust Deed applies to this Supplemental Deed as if set out in full herein, but with references to 'this deed' substituted for references to 'this Supplemental Deed'.

2 Amendment

With effect on and from the date of this Supplemental Deed, the Trustee and the Manager agree to adopt, as the replacement trust deed of the Trust, the version of the Trust Deed as set out in the Schedule.

3 Governing Law and Jurisdiction

This Supplemental Deed shall be governed by the laws of New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales.

4 Electronic Execution

Either party may sign this Supplemental Deed electronically, and bind itself accordingly. In addition, if a party signs this Supplemental Deed electronically, the intention is to print out this Supplemental Deed after all parties that are signing electronically have done so, so that the first such print-out will also be an executed original counterpart of this Supplemental Deed. Each signatory confirms that their signature appearing in this Supplemental Deed, including any such print-out, is their personal signature authenticating it.

Executed and delivered as a deed in Sydney.

TRUSTEE

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **PEP Gateway Co-investment Investors Administration Pty Limited** in its capacity as trustee of **Pacific Equity Partners Gateway Co-investment Trust**:



Director Signature

Simon David Pillar

Name of director (print)



Director/Secretary Signature

Wai Sum Kong

Name of director/secretary (print)

MANAGER

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **PEP Gateway Management Pty Limited**:



Director Signature

Cameron Blanks

Name of director (print)



Director/Secretary Signature

Wai Sum Kong

Name of director/secretary (print)

Schedule

Amendments to the Trust Deed

The version of the Trust Deed that is adopted is set out on the following pages.

PEP Gateway Co-investment Investors Administration Pty Limited (ACN 655 543 105)

PEP Gateway Management Pty Limited (ACN 655 960 795)

Trust Deed

Pacific Equity Partners Gateway Co-investment Trust

Allens
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Corner Hunter and Phillip Streets Sydney NSW 2000
Tel +61 2 9230 4000
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This Supplemental Deed is made on _____ 2023

Parties

- 1 **PEP Gateway Co-investment Investors Administration Pty Limited** (ACN 655 543 105) of Level 31, 126 Phillip Street, Sydney, New South Wales, Australia 2000 (**Trustee**).
- 2 **PEP Gateway Management Pty Limited** (ACN 655 960 795) of Level 31, 126 Phillip Street, Sydney, New South Wales, Australia 2000 (**Manager**).

Recitals

- A It is proposed that from time to time the Trust, PEP Gateway and, where relevant, one or more vehicles managed or operated by a Manager Affiliate and/or one or more third party investors, will collectively acquire direct or indirect equity interests in one or more Investments on the terms of this Deed. From time to time, the Manager or the Trustee may determine that the Trust will participate in an Investment opportunity, although, neither the Manager nor the Trustee shall be obligated to do so.
- B All Ordinary Units which are issued during a Financial Year will be designated to a single Series which corresponds to that Financial Year, provided that, in accordance with the terms of this Deed: (i) Ordinary Units issued in the 2022 or 2023 Financial Years will be allocated to the same Series; and (ii) the Trustee may designate Ordinary Units which are issued in a subsequent Financial Year to the same single Series as Ordinary Units which are issued in a previous Financial Year or Ordinary Units which are issued in a previous Financial Year to the same single Series as Ordinary Units which are issued in a subsequent Financial Year.

It is declared as follows.

1 Definitions and interpretation

1.1 Definitions

A term or expression starting with a capital letter:

- (a) which is defined in paragraph 2 of Schedule 1 (the Dictionary), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

1.2 Interpretation

Paragraph 2 of Schedule 1 sets out rules of interpretation for this Deed.

1.3 Appointment of Trustee and Manager and declaration of Trust

- (a) The Trustee agrees to act as trustee of the Trust and the Manager agrees to act as manager of the Trust.
- (b) The Trustee holds the Trust fund on trust for the Unitholders in accordance with this Deed.
- (c) The Trust commences on the date the first Unit is issued (which Unit may be a Sponsor Unit or an Ordinary Unit).
- (d) The Trustee must hold the Trust fund as a separate fund which is not available to meet liabilities of any other trust.
- (e) This Deed binds the Unitholders, the Trustee and the Manager in accordance with its terms.

1.4 Name

By this Deed the Trustee and the Manager constitute a unit trust called the 'Pacific Equity Partners Gateway Co-investment Trust'. The Trustee may change the name of the Trust in its discretion. Any rights or property of every description of the Trust that is conveyed to or vested in or held on behalf of the Trustee or which is conveyed into or vested in the name of the Trust shall be held or deemed to be held by the Trustee upon trust as an asset of the Trust in accordance with the terms of this Deed. All letters, contracts, deeds, instruments or documents whatsoever shall be entered into by or on behalf of the Trustee (or any agent or delegate of the Trustee) as trustee of the Trust.

1.5 Purpose of the Trust

- (a) The primary purpose of the Trust is to acquire (whether directly or indirectly) Investments alongside PEP Gateway, and conduct any activities reasonably incidental or necessary with respect to the foregoing.
- (b) By making a Commitment, each Ordinary Unitholder acknowledges and agrees that the Trust has been established for the primary purpose of facilitating the co-investment alongside PEP Gateway (and, if relevant, one or more other Persons). In furtherance thereof, by making a Commitment, each Ordinary Unitholder acknowledges and agrees that, to the extent permitted by law:
 - (i) the Trust's Investments are intended to be managed to follow the same investment strategy as PEP Gateway in respect of each Investment;
 - (ii) each of the Trustee and the Manager is authorised (but not obligated), without the consent of the Unitholders, to take all actions in parallel with PEP Gateway as they relate to an Investment, including all buy, sell, exercise, financing, refinancing, voting and other material decisions relating to the Investment;
 - (iii) except as expressly provided in this Deed, the Trust shall invest in each Investment (directly or indirectly) alongside PEP Gateway;
 - (iv) subject to the duties it owes to Unitholders at law and under the terms of this Deed, the Trustee may, on behalf of the Trust and without the need to seek the consent of any Unitholder, enter into any transaction (including in respect of an acquisition, disposal and/or co-investment) with any trust or other collective investment vehicle managed or operated by PEP or a Manager Affiliate; and
 - (v) without limiting the generality of sub-paragraph (iv), subject to the duties it owes to Unitholders at law and under the terms of this Deed, the Trustee may, on behalf of the Trust and without the need to seek the consent of any Unitholder, acquire an Investment (whether or not alongside PEP Gateway) with the intention of transferring a portion of the Trust's interest in that Investment to PEP Gateway in one or more tranches at a later date or later dates.

1.6 Term

The Trust shall continue until terminated in accordance with the terms of this Deed.

2 Wholesale Trust

The Trust has been established with the intention that an offer of Units will only be made by the Trustee to wholesale clients (as such term is defined in the Corporations Act).

3 Units and Unitholders

3.1 Units

The beneficial interest in the Trust fund will be divided into Units which may be issued by the Trustee at any time. Unless the Terms of Issue of a Unit or a Class otherwise provides, all Units will carry all rights, and be subject to all the obligations, of Unitholders under this Deed.

3.2 Classes

- (a) Different Classes may be issued, and the Trustee may convert any Units of one Class into Units of another Class if necessary or desirable to give effect to this Deed.
- (b) If the Trustee determines in relation to particular Units, the Terms of Issue of those Units (including Units in a particular Series) may:
 - (i) except in the case of Sponsor Units, provide for a Redemption Price calculated in a way that is different from the redemption price set out in this Deed;
 - (ii) vary the Trust Property or Trust Liabilities which relate to such Units;
 - (iii) designate Trust Property (as varied), or the rights and obligations under that Trust Property or Trust Liabilities (as varied) as relating to a specified Series or Class; and
 - (iv) allocate any Expenses or other Trust Liabilities (including Management Fees, and Administrative Fees) which are referable to a particular Class or Series to that Class or Series.
- (c) Subject to paragraph (b), there will be the following Classes of Units:
 - (i) Ordinary Units; and
 - (ii) Sponsor Units.
- (d) Ordinary Unit and Sponsor Units have the respective rights and obligations set out in this Deed.

3.3 Ordinary Units

- (a) The Trustee may issue any number of Ordinary Units.
- (b) Ordinary Units shall bear Management Fees, Administrative Fees, Expenses and Sponsor Distributions.
- (c) Ordinary Unitholders are entitled to distributions of Income and Trust Property in accordance with clause 10.

3.4 Sponsor Units

- (a) The Trustee may issue any number of Sponsor Units to a Sponsor.
- (b) Sponsor Units shall not bear Management Fees, Administrative Fees, Expenses or (for the avoidance of doubt) Sponsor Distributions.
- (c) Sponsor Unitholders are entitled to Sponsor Distributions in accordance with clause 10.
- (d) Sponsor Units carry no rights (including with respect to votes and distributions) except for any entitlement to distributions under clause 10 (if any) and their voting rights under clauses 3.6(b) and 16.

3.5 Consolidation and re-division

- (a) Subject to paragraph (b), the Trustee may at any time consolidate or divide the Trust fund referable to Ordinary Units into any number of Ordinary Units other than the number into which the Trust fund referable to Ordinary Units is for the time being divided.
- (b) A consolidation or division of a kind referred to in paragraph (a) must not change the ratio of Units of a Class or Series registered in the name of any Unitholder to the Units on issue in that Class or Series (as the case may be).

3.6 Rights attaching to Units

- (a) A Unitholder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Subject to clause 16, the rights and entitlements attaching to Units may not be varied by amendment of this Deed or otherwise, except with the prior approval of an Ordinary Resolution of the:
 - (i) Ordinary Unitholders, in the case of an amendment which has the effect of varying the rights and entitlements attaching to Ordinary Units; or
 - (ii) Sponsor Unitholders, in the case of an amendment which has the effect of varying the rights or entitlements attaching to Sponsor Units.

3.7 Unitholders not to interfere

A Unitholder (other than the Trustee or the Manager) will not:

- (a) take any part in the conduct or management of the Trust, Trust Property or Trust Liabilities;
- (b) have any power or authority to bind the Trust, the Trustee or the Manager; or
- (c) interfere with, or exercise powers of, the Trustee or the Manager in respect of any Trust Property, Trust Liability or obligation (including by lodging a caveat affecting any Trust Property).

3.8 Voting rights

- (a) Subject to clause 3.4(d) and paragraph (b), each Unit carries one vote regardless of whether the Unit is fully or partly paid.
- (b) An Ordinary Unitholder who is a Manager Affiliate has no voting rights except for their voting rights under clauses 3.6(b) and 16.
- (c) A Trustee Unitholder may elect, with the consent of the Manager, to use 'look-through voting' and exercise its voting rights in a manner that reflects the underlying votes of its members or beneficiaries, based on their ownership percentage of such Trustee Unitholder.

3.9 Dealing with Units

- (a) A Unitholder must not dispose of or otherwise deal with its Units other than in accordance with this Deed.
- (b) A Unitholder may not create any Security Interest over a Unit without the consent of the Trustee.
- (c) Any disposal or other dealing in a Unitholder's Units other than in accordance with this Deed has no effect unless the Trustee determines otherwise.

3.10 Redemption or cancellation of Units

Units can only be redeemed or cancelled by the Trustee:

- (a) where the Trustee is proposing to redeem or cancel Ordinary Units in accordance with clause 7;
- (b) where the Trustee is proposing to redeem or cancel Sponsor Units, with the prior consent of the relevant Sponsor Unitholder provided that a redemption or cancellation of Sponsor Units must not result in the Sponsor Unitholder becoming entitled to a Sponsor Distribution that would not otherwise be payable to the Sponsor Unitholder at the time of the redemption or cancellation; and
- (c) in accordance with clause 25.5.

4 Issue of Units

4.1 Minimum Commitment

- (a) The minimum Commitment which must be made in an Application Form is \$10 million or such lesser amount as the Trustee in its discretion determines and notifies to any applicant for Ordinary Units.
- (b) No minimum Commitment applies in respect of an application for Sponsor Units.

4.2 Maximum Commitment

Without limiting clause 4.3, there is no maximum limit on the value of a prospective Unitholder's Commitment in an application for Ordinary Units.

4.3 Acceptance or rejection

- (a) The Trustee may accept Commitments from each Ordinary Unitholder in accordance with clause 4.5, at such times as agreed between the Trustee and the Ordinary Unitholder, provided that the Trustee has absolute discretion as to whether to accept or reject a proposed Commitment in whole or in part. The Trustee generally expects to accept Commitments every Quarter, subject to any separate agreement between the Trustee and any Ordinary Unitholder.
- (b) The Trustee must reject a proposed Commitment if such proposed Commitment does not comply with clause 4.1.

4.4 Terms of Issue

Subject to the provisions of this Deed:

- (a) the Trustee may allot and issue Units for such consideration as may be determined by the Trustee; and
- (b) the allotment and issue of Units shall be made in such manner, at such times and on such terms and conditions and generally in such manner as the Trustee may determine.

4.5 Ordinary Unit Series

- (a) If an application for Ordinary Units is accepted by the Trustee, then the relevant Ordinary Unitholder will generally be issued Ordinary Units in a Series against the payment of a Drawdown Notice.
- (b) All Ordinary Units which are issued:
 - (i) in a particular Financial Year will be designated to the same Series, provided that any Ordinary Units issued in the 2022 or 2023 Financial Years will be allocated to the same Series;

- (ii) in respect of a follow-on Investment made in relation to an Investment will generally be designated to the same Series as the Ordinary Units which correspond to that Investment and only to Ordinary Unitholders who hold Ordinary Units which relate to that Investment, unless otherwise determined by the Trustee in its sole discretion (taking into account, among other things, the Trustee's rights under clause 12(d)(i)); and
- (iii) in respect of an instalment payment in respect of any Expenses, Management Fees or Administrative Fees referable to or allocated by the Trustee to a particular Series in accordance with the terms of this Deed will be designated to that same Series.

The Trustee and the Unitholders acknowledge and agree that, to the extent required to comply with this paragraph (b) and the other provisions of this Deed, the Trustee may designate some or all of the Units issued to an Ordinary Unitholder in respect of the same Commitment to one or more Series.

4.6 Issue of Units

Units are taken to be issued when an appropriate entry is made in the Register, or at such other time as the Trustee determines in good faith.

4.7 Number of Units issued

The number of Units issued at any time in respect of a subscription for Units will be calculated as follows:

- (a) by dividing the subscription money by the applicable Issue Price; and
- (b) by rounding down to the nearest Unit.

4.8 No fractions of Units

The Trustee must not issue fractions of a Unit. If a calculation performed in accordance with this Deed results in the issue or redemption of a fraction of a Unit, the number of Units issued or redeemed must be rounded down to the nearest whole number of Units. Any money or property that remains as a result of rounding becomes part of the Trust Property.

4.9 Certificates

No certificates will be issued for Units (unless the Trustee determines otherwise in relation to some Units, a Class or all Units).

4.10 Joint tenancy

Persons registered jointly as the Unitholder of a Unit hold as joint tenants and not as tenants in common.

4.11 Unitholders

Subject to the express terms of this Deed, the Manager and any Manager Affiliate may be a Unitholder (including, for the avoidance of doubt, a Sponsor Unitholder).

4.12 Restriction on issue and redemption of Units

The Trustee cannot issue or redeem any Units or any other interests in the Trust from the 80th anniversary of the Trust Commencement Date if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity. This clause prevails over all other provisions of this Deed.

5 Issue Price

5.1 Issue Price for Ordinary Units

Unless the Trustee determines otherwise, the Issue Price for Ordinary Units will be:

- (a) in respect of the first Ordinary Units issued in a particular Series (the **Initial Ordinary Units**), A\$1.00 per Unit; and
- (b) in respect of any Ordinary Units issued in a particular Series that are not the Initial Ordinary Units in respect of that Series, calculated based on a fraction, the numerator of which is equal to the Net Asset Value of the relevant Series and the denominator of which is equal to the number of Units on issue in the relevant Series (adjusted (if required) to give effect to clause 27.6(b)).

5.2 Issue Price for Sponsor Units

Subject to clause 14.3(d), the Issue Price for Sponsor Units will be \$0.01.

5.3 Satisfaction of Issue Price

The Issue Price must be satisfied by payment of Cash or as the Trustee otherwise agrees.

6 Drawdowns

6.1 Drawdowns against Commitments

- (a) Subject to clause 6.3, the Trustee may request a drawdown against the Undrawn Commitment of an Ordinary Unitholder at any time by serving a Drawdown Notice on that Unitholder in accordance with this Deed.
- (b) The Trustee may request a drawdown to make or allow to be made any anticipated payment contemplated by this Deed, including making Investments or paying actual or anticipated fees (including Management Fees and Administrative Fees), Expenses, Trust Liabilities or losses of the Trust. Where such payments contemplated by this Deed:
 - (i) correspond to a particular Series (as determined in the Trustee's good faith discretion), only Ordinary Unitholders who hold Ordinary Units in that Series will be issued a Drawdown Notice in accordance with paragraph (d) (and subject to and without limiting clause 27.6(b), such Ordinary Unitholders will be issued further Ordinary Units in that Series in respect of payment of the drawdown amount); or
 - (ii) do not correspond to a particular Series (as determined in the Trustee's good faith discretion), the Trustee will issue a Drawdown Notice to all Ordinary Unitholders, pro rata based on their Trust Proportion (in respect of each Ordinary Unitholder, up to a maximum of that Ordinary Unitholder's Undrawn Commitment(s)).
- (c) An Ordinary Unitholder must pay to the Trustee on the Drawdown Date the amount specified in any Drawdown Notice served on it.
- (d) Unless the Trustee otherwise determines in its sole discretion (including in the circumstances envisaged in clause 27.6(b) and other than any Pre-Paid Commitment Drawdown Notice), the Trustee will serve Drawdown Notices issued in respect of a Series on the Ordinary Unitholders in order of priority so that Ordinary Unitholders who have a Commitment accepted at an earlier date have their Undrawn Commitment in respect of that Commitment exhausted (save for any Reserve Amount) before a Drawdown Notice is issued to any Ordinary Unitholder in respect of a Commitment accepted at a later date.

- (e) If, after payment has been made under a Drawdown Notice, an event outside the control of the Trustee occurs such that:
- (i) the Trustee is no longer able to apply the drawdown for its intended purpose; or
 - (ii) where the drawdown is for the purpose of making an Investment, in the reasonable opinion of the Trustee, the event may materially and adversely affect the manner in which the drawdown may be applied to the making of the Investment,
- the Trustee may within 90 days after the Drawdown Date repay all or part of the amount of the drawdown to the holder of the Units in respect of which the drawdown was paid and the amount will, for the purposes of this Deed, continue to be treated as part of the Ordinary Unitholder's Undrawn Commitment (and the other provisions of this clause 6.1 shall be construed accordingly).
- (f) The Trustee may require the Ordinary Unitholders who are not, in the opinion of the Trustee, institutional investors to maintain, at a financial institution nominated by the Trustee, such level of Cash or liquid assets which is, in the opinion of the Trustee, sufficient to facilitate payment of a drawdown under this clause 6.1.
- (g) Notwithstanding anything to the contrary in this Deed, if agreed between the Trustee and an applicant for Ordinary Units in respect of a particular Commitment, then such applicant (a **Pre-Paying Unitholder**) must pay, following the date of acceptance of the relevant Commitment and upon receipt of a Drawdown Notice (the **Pre-Paid Commitment Drawdown Notice**), an amount equal to 100% of that Commitment in a single instalment into an escrow account maintained in the name of the Trustee or the Manager (the details of which will be included in the relevant Pre-Paid Commitment Drawdown Notice, the **Pre-Payment Bank Account**) (a **Pre-Paid Commitment**). Where a Pre-Paying Unitholder makes a Pre-Paid Commitment, the Trustee must still issue a Drawdown Notice to that Pre-Paying Unitholder where required under the terms of this Deed as if that Pre-Paying Unitholder had not made a Pre-Paid Commitment, provided that notwithstanding anything to the contrary in this Deed:
- (i) in lieu of a Pre-Paying Unitholder paying to the Trustee on the Drawdown Date the amount specified in a Drawdown Notice other than the relevant Pre-Paid Commitment Drawdown Notice, the Trustee or the Manager shall withdraw such amount from the Pre-Payment Bank Account;
 - (ii) if the Trustee is required pursuant to paragraph (e) to repay all or part of a drawdown to a Pre-Paying Unitholder, it shall discharge that obligation by transferring the relevant amount into the Pre-Payment Bank Account;
 - (iii) for such time as amounts are deposited in a Pre-Payment Bank Account, such amounts shall not:
 - (A) constitute Trust Property;
 - (B) reduce the Undrawn Commitment of the relevant Pre-Paying Unitholder; or
 - (C) be deemed for any purpose under this Deed other than this paragraph (g) to have been paid to the Trustee or the Manager by the relevant Pre-Paying Unitholder;
 - (iv) subject to and without limiting the Trustee's discretion under this Deed (including its discretion to retain Reserves in respect of a particular Commitment) and unless otherwise agreed between the Trustee and the relevant Pre-Paying Unitholder, upon occurrence of the Following Series End Date in respect of a Commitment, or

termination of the Trust, the Trustee shall return to each Pre-Paying Unitholder such amount (if any) as is:

- (A) deposited in the Pre-Payment Bank Account in respect of the relevant Commitment (or, in the case of termination of the Trust, in respect of each Commitment of that Pre-Paying Unitholder); and
 - (B) referable to the relevant Commitment (or, in the case of termination of the Trust, referable to each Commitment) of that Pre-Paying Unitholder (including any interest allocated to that Pre-Paying Unitholder pursuant to sub-paragraph (v) below); and
 - (v) the Pre-Payment Bank Account will be interest-bearing and the Trustee will allocate any interest accrued among the Pre-Paying Unitholders on a fair and reasonable basis.
- (h) Notwithstanding anything to the contrary in this Deed but subject to the duties it owes to Unitholders at law and under the terms of this Deed, the Trustee:
- (i) may cause the transfer of all or any portion of an Investment from one Series to another Series for consideration which the Trustee determines (taking into account its aforementioned duties) is appropriate in the circumstances; and
 - (ii) shall be entitled to construe each other provision of this Deed (acting reasonably and in good faith) so as to give effect to this paragraph (h).

6.2 Drawdown Date

A Drawdown Date must not be less than 10 Business Days after the date of the Drawdown Notice (or such shorter period as agreed between the Trustee and the relevant Unitholder).

6.3 Series End Dates

Subject to clause 6.4, the Trustee may issue a Drawdown Notice to an Ordinary Unitholder in respect of a particular Commitment as follows:

- (a) the Trustee may issue Drawdown Notices to that Ordinary Unitholder up until (and including) the final day of the Financial Year in which the relevant Commitment is accepted by the Trustee (or, in respect of any Commitment accepted by the Trustee in the 2022 Financial Year, the final day of the 2023 Financial Year) (the **First Series End Date**). If, as at the First Series End Date, all or part of such Commitment has not been drawn down by the Trustee in accordance with the immediately foregoing sentence, the Trustee will determine the Reserve Amount in respect of such Commitment in accordance with clause 6.4, with the balance of the Undrawn Commitment in respect of the such Commitment (if any) remaining available to be drawn down in respect of the Following Series, until the Following Series End Date; and
- (b) as at the Following Series End Date in respect of the relevant Commitment, the Trustee will calculate the Reserve Amount for the relevant Following Series in accordance with clause 6.4, and must cancel and release any remaining Undrawn Commitment in respect of such Commitment (other than the relevant aggregate Reserve Amounts in respect of such Commitment, calculated in accordance with paragraph (a) and this paragraph (b), which shall not be cancelled or released and shall remain capable of being called by the Trustee, including pursuant to one or more Drawdown Notices, in accordance with the terms of this Deed), following which the Trustee will no longer be entitled to issue a Drawdown Notice to the relevant Unitholder in respect of such cancelled Commitment other than in accordance with clause 24.1,

provided for the avoidance of doubt that the cancellation and release of all or a portion of a Commitment pursuant to this clause 6.3 shall not require the cancellation or release of any other Commitment of the relevant Ordinary Unitholder which has been accepted by the Trustee.

6.4 Reserves

- (a) In respect of each Commitment, as at the First Series End Date and the Following Series End Date (and at any other time as required in accordance with the terms of this Deed, including clause 6.1(d)), the Trustee will determine and (in respect of the First Series End Date and the Following Series End Date) notify to the relevant Ordinary Unitholder, the Reserve Amount, which will be calculated by the Trustee as the sum of:
 - (i) a portion of the total Undrawn Commitment (if any, as determined by the Trustee in its sole discretion) in respect of the relevant Commitment to be retained for the purpose of funding follow-on Investments in relation to Investments held in respect of any Series referable to that Commitment as at the relevant calculation date (***Follow-on Funding Reserved Amount***); and
 - (ii) a portion of the total Undrawn Commitment (if any, as determined by the Trustee in its sole discretion) in respect of the relevant Commitment to be retained to cover estimated future fees (including Management Fees and Administrative Fees), Expenses, Trust Liabilities or losses of the Trust which are referable or allocable (in accordance with the terms of this Deed) to:
 - (A) any Series in which the Unitholder holds Units; or
 - (B) to Unitholders or any Class thereof generally,***(Expenses Reserved Amount)***.

6.5 Aggregate capital contributions

Although the Trustee generally intends to fund the discharge of any Expenses or fees of the Trust in the first instance through the application of income and capital received by the Trust from its Investments or by issuing Drawdown Notices to the relevant Unitholders, notwithstanding anything to the contrary in this Deed, the Trustee may from time to time require the Ordinary Unitholders to make capital contributions to pay the Trust's Expenses and fees (including Management Fees and Administrative Fees) and in relation thereto may issue a written notice identifying the purpose for which the payment will be applied, provided that Units issued against the payment of such capital contributions will be designated to the Series to which the relevant Expenses or fees are referable or allocated by the Trustee in accordance with the terms of this Deed. Any notice for payment delivered pursuant to this clause 6.5 must specify the date by which the payment must be made, which date, unless otherwise agreed by the Trustee and the relevant Ordinary Unitholder, must not be less than 10 Business Days after the date of the notice.

6.6 No reinvestment

The Trustee shall not have the right to reinvest Proceeds without the consent of all Ordinary Unitholders, other than in Short-Term Investments pending distribution to the Unitholders.

6.7 Register

- (a) The Trustee shall cause to be maintained in the principal office of the Trustee or at such other location as the Trustee may from time to time determine a record which may include, among other things:
 - (i) the name and address of each Unitholder, the date on which a person became a Unitholder and the date on which a person ceased to be a Unitholder;

- (ii) the Class and Series of each Unit;
- (iii) the amount and date of each of the Unitholder's Commitments and to which one or more Series they relate; and
- (iv) such other information as the Trustee may deem necessary or desirable,
(the **Register**).
- (b) The Register shall not be part of this Deed and the Trustee may update the Register from time to time without the consent of any other Person to reflect any changes in the information contained therein.
- (c) Every Unitholder must promptly notify the Trustee of any change of name or address of the Unitholder.
- (d) The Trustee must alter the Register to reflect any changes in the particulars of a Unitholder.
- (e) Only the Persons entered into the relevant Register are recognised as having any interest in a Unit.
- (f) The Trustee may treat the registered Unitholder as the absolute owner of the relevant Units for all purposes. The entry on the Register will be conclusive except where the Trustee is satisfied of manifest error. Except as required by law, the Trustee is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest in any Unitholding.

6.8 Capital contributions without the issue of Units

- (a) The Trustee may, with the consent of the relevant Unitholder, require any amount payable by a Unitholder to the Trustee to be paid without a corresponding issue of Units. Any amount contributed without a corresponding issue of Units will become an asset of the Trust on payment of the amount to the Trustee (or as the Trustee directs).
- (b) Nothing in this clause 6.8 restricts the Trustee's power to issue Units and no clause relating to issuing Units limits the Trustee's powers under this clause 6.8.

7 Redemption of Units

7.1 Terms of Issue

This clause 7 has effect in respect of each Class but are subject to the Terms of Issue of that Class.

7.2 Redemption on terms of Deed

Except as determined by the Trustee (in its sole discretion), no Ordinary Unitholder will have any right to redeem its Ordinary Units.

7.3 Redemption in case of material adverse effect

- (a) The Trustee may at any time redeem the Units of a Unitholder (a **Withdrawing Unitholder**) if the Trustee reasonably determines based on the advice of counsel that the continuation of the Withdrawing Unitholder as a Unitholder is likely to materially and adversely affect the regulatory status of the Trust, the effective realisation of Trust Property or the taxation treatment of the Trust or other Unitholders (including the qualification of the Trust as an AMIT).
- (b) The Trustee must:
 - (i) give a Withdrawing Unitholder at least five Business Days' advance notice of the redemption under paragraph (a);

- (ii) redeem the Units of the Withdrawing Unitholder for the Redemption Price and use commercially reasonable efforts to pay the redemption proceeds to the Withdrawing Unitholder within six months of the redemption; and
- (iii) following the redemption, cancel the Units of the Withdrawing Unitholder.

7.4 Redemption Price

- (a) The Redemption Price for a Sponsor Unit will be equal to the Issue Price for that Sponsor Unit.
- (b) Subject to the Terms of Issue of a Unit or a Class, the Redemption Price for any Ordinary Unit will be calculated based on a fraction, the numerator of which is equal to the Net Asset Value of the relevant Series and the denominator of which is equal to the number of Units on issue in the relevant Series, in each case calculated as at or immediately prior to the proposed date of redemption (in each case as determined by the Trustee acting reasonably and in good faith and adjusted (if required) to give effect to clause 27.6(b)).

8 Transmission of Units

8.1 Entitlement to Units on death

In the case of the death of a Unitholder who is a natural person:

- (a) where the deceased was a joint holder, the survivor or survivors; and
 - (b) where the Unitholder was a sole holder, the legal personal representatives of the deceased,
- will be the only persons recognised by the Trustee as having any title to the Unitholder's interest in the Units. This does not release:
- (c) the estate of a deceased joint holder from any liability in respect of a Unit that had been jointly held by the Unitholder with others; or
 - (d) where the Unitholder was a sole holder, the legal personal representative or the trustee of the Unitholder's estate from any liability in respect of Units held by the deceased Unitholder.

8.2 Registration of Persons entitled

- (a) If a person becoming entitled to a Unit in consequence of the death or, subject to the *Bankruptcy Act 1966* (Cth), bankruptcy of a Unitholder or, subject to the Corporations Act, the insolvency of a Unitholder produces all information that is properly required by the Trustee, that person may elect either:
 - (i) by written notice to the Trustee to be registered as the holder of the Unit; or
 - (ii) to nominate some other person to be registered as the transferee of the Unit and execute a transfer of the Unit to that other person.
- (b) All the limitations, restrictions and provisions of this Deed relating to transfers of Units are applicable to a notice or transfer under clause 8.2(a) as if the death, bankruptcy or insolvency of the Unitholder had not occurred and the notice of transfer were a transfer signed by that Unitholder.

8.3 Distributions and other rights

- (a) Where a Unitholder dies or becomes bankrupt, the Unitholder's personal representative, or the trustee of the Unitholder's estate, is entitled to the same rights and distributions as the Unitholder would have been entitled to if the Unitholder had not died or become bankrupt, but only upon the production of information that is properly required by the Trustee.

- (b) Where two or more persons are jointly entitled to any Unit in consequence of the death of the Unitholder, they will be taken to be joint holders of the Unit.

8.4 Deed of accession

A transferee or other recipient of title to Units under this clause 8 accedes to the terms and obligations of this Deed and must if required by the Trustee execute a deed of accession in the form required by the Trustee.

9 Powers, Duties and Liabilities of the Trustee and the Manager

9.1 Powers and duties

- (a) Management, operation and policy of the Trust shall be vested exclusively in the Trustee, which shall have the power by itself and shall be authorised and empowered on behalf and in the name of the Trust to carry out any and all of the powers, objectives and purposes of the Trust and to perform all acts and enter into and perform all contracts and other undertakings and engage in all activities and transactions which it may in its sole discretion deem necessary or advisable or incidental thereto, subject only to the limitations contained in this Deed.
- (b) The Unitholders shall take no part in the conduct or control of the Trust business and shall have no authority or power to act for or bind the Trust or the Trustee. The Unitholders shall not take any action on behalf of the Trust or the Trustee or in any way commit the Trust or the Trustee to any agreement or contract and shall have no right or authority to do any of the foregoing. Except as explicitly provided herein or under relevant law, no Unitholder shall be liable for any debt, liability or other obligation of the Trust.
- (c) The Trustee shall have all powers permitted under applicable laws to do any and all things deemed by the Trustee to be necessary or desirable in furtherance of the purposes of the Trust in accordance with applicable law and in the best interests of the Unitholders as a whole. Without limiting the foregoing general powers and duties, but subject to the limitations contained in this Deed, the Trustee is hereby authorised and empowered on behalf and in the name of the Trust:
 - (i) to elect or appoint, delegate authority to, remove and terminate such agents and officers as it considers appropriate;
 - (ii) to employ one or more custodians of the assets of the Trust and authorise such custodians to employ sub-custodians and agents and to deposit all or any part of such assets in a system or systems for the central handling of securities or with such other Person or Persons as the Trustee may determine;
 - (iii) subject to clause 1.5, clause 1.6, clause 6.6 and the provisions of any Other Agreement, to invest and reinvest the assets of the Trust in interests in, including, without limitation, equity, debt obligations, and other securities of, any form of issuer, wherever such issuer may be located, organised or operated, whether within or outside Australia, without limitation as to marketability of the securities or other interests reflecting such investments;
 - (iv) to vote, give assent and otherwise to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the securities or other assets of the Trust and to execute and deliver proxies or powers of attorney to such Person or Persons as the Trustee shall deem proper, granting to such Person or Persons such power and discretion with relation to securities or other assets as the Trustee shall deem proper;

- (v) to exercise powers and rights which in any manner arise out of ownership of securities, including without limitation subscription rights, on behalf of the Trust;
- (vi) to institute, prosecute, defend, settle, compromise or otherwise adjust all claims (including but not limited to claims for taxes) and litigation arising out of the conduct of the affairs of the Trust or the Trustee or in the enforcement of obligations due either of them, including all rights of appeal;
- (vii) to employ or consult with such agents or independent contractors as the Trustee may deem necessary or advisable, including without limitation, brokers, auditors, counsel, consultants or managers or specialists in any field of endeavour whatsoever, including such Persons, firms or companies as may be Unitholders or Affiliates of any Unitholder;
- (viii) to pay or cause to be paid out of the capital or income of the Trust, or partly out of capital and partly out of income, as the Trustee deems fair, all Expenses, fees, charges, taxes and liabilities incurred or arising in connection with the conduct of the affairs of the Trust, or in connection with the management thereof, including but not limited to, such Expenses and charges for the services of the Trust's consultants, auditors, counsel, custodians, and such other agents or independent contractors and such other Expenses and charges as the Trustee may deem necessary or proper to incur;
- (ix) subject to the provisions of any Other Agreement, to endorse, accept or guarantee the payment of any notes, drafts or other obligations of any Person in connection with the activities of the Trust; to make contracts of guaranty or suretyship, or otherwise assume liability for payment thereof, including reimbursement obligations; and to mortgage and pledge any part of the property or rights of the Trust (including the rights of the Trust and/or the Trustee described in this clause 9.1(c)(ix) but not all or substantially all of the other property or rights of the Trust) and the Trustee to secure any of or all such obligations;
- (x) subject to the terms of this Deed, to borrow money, to obtain letters of credit and any other financing and make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange and other instruments and evidences of indebtedness, and secure the payment thereof by mortgage, pledge or assignment of or Security Interest in all or any part of the securities and other property then owned or thereafter acquired by the Trust, for the benefit of the Trust and any Investment (and not for the benefit of any other Person, including, without limitation, the Trustee or its Affiliates);
- (xi) to enter, make and perform such other contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of any of the foregoing powers, objects or purposes; and
- (xii) to execute all other instruments of any kind or character and to take all action of any kind or character which the Trustee may in its sole discretion determine to be necessary or appropriate in connection with the business of the Trust.

9.2 Trustee may delegate

- (a) Subject to paragraph (e), the Trustee, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including holding any Trust Property, executing documents on its behalf or exercising or discharging any or all of the duties, powers, discretions and other functions of the Trustee under this Deed or otherwise in relation to the Trust.

- (b) The Trustee must exercise reasonable care and skill in selecting, authorising and monitoring a person who is authorised pursuant to paragraph (a).
- (c) The Trustee is responsible for the acts or omissions of a person authorised pursuant to paragraph (a).
- (d) Any act or omission of a person authorised pursuant to paragraph (a) is deemed to be an act or omission of the Trustee for the purposes of clause 9.10.
- (e) The Trustee must not appoint a person to exercise the overall rights and perform the overall obligations of the Trustee under this Deed except with approval by Special Resolution of the Ordinary Unitholders (and without limiting, for the avoidance of doubt, the appointment of the Manager pursuant to this Deed).
- (f) The Trustee delegates control of the affairs and operations of the Investments to the Manager and, without limiting the foregoing, the Trustee delegates to the Manager all approval and voting powers in relation to certain key decisions pertaining to the affairs or operations of the Investments.

9.3 Trustee covenants

The Trustee will:

- (a) treat the Unitholders who hold interests of the same Class or Series equally and Unitholders who hold interests in different Classes or Series fairly; and
- (b) not exercise a discretion under this Deed which materially diminishes or expands the rights of Unitholders to income or capital of the Trust.

9.4 Role of Manager

- (a) The Manager will manage the Trust in accordance with the provisions of this Deed until such time as it retires as manager of the Trust.
- (b) Subject to this Deed, the Manager may:
 - (i) take all steps and engage in all activities and transactions which it determines are desirable in connection with the investigation or negotiation for the acquisition or disposal of Trust Property and the management of the Trust, Trust Property and Trust Liabilities;
 - (ii) make recommendations and provide advice or instructions to the Trustee in relation to the Trust, Trust Property and Trust Liabilities; and
 - (iii) collect all monies and assets payable or receivable in respect of the Trust and pay or transfer them to the Trustee.
- (c) The Trustee will delegate to the Manager all approval and voting powers in relation to certain key decisions pertaining to the affairs or operations of the Investments.

9.5 Manager covenants

The Manager must:

- (a) manage the Trust, Trust Property and Trust Liabilities in accordance with this Deed, including:
 - (i) performing the day-to-day investment and administrative operations of the Trust and supervising the management of the Trust's business and affairs, including distributions to Unitholders and provision of information to Unitholders;

- (ii) keeping materially complete and materially accurate books and records of the activities of the Trust; and
 - (iii) providing other clerical services for the Trust as reasonably required;
- (b) act honestly;
- (c) exercise due care and skill of an experienced manager of private equity investments in performing the obligations of the Manager under this Deed and otherwise in relation to the Trust;
- (d) treat the Unitholders who hold interests of the same Class or Series equally and Unitholders who hold interests in different Classes or Series fairly;
- (e) not exercise a discretion under this Deed which materially diminishes or expands the rights of Unitholders to income or capital of the Trust; and
- (f) conduct the affairs of the Trust in compliance with all applicable laws (including but not limited to any anti-money laundering and anti-corruption laws and regulations applicable to the Trust) where non-compliance would have a material adverse effect on the Unitholders as a whole.

9.6 Manager may delegate

- (a) Subject to paragraph (b), the Manager, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including holding any Trust Property, executing documents on its behalf or exercising or discharging any of the duties, powers, discretions and other functions of the Manager under this Deed or otherwise in relation to the Trust. Without limiting the previous sentence, and to avoid doubt, the Manager may also sub-delegate anything which the Trustee has delegated to the Manager.
- (b) The Manager must not appoint a person to exercise the overall rights and perform the overall obligations of the Manager under this Deed except with approval by Special Resolution of the Unitholders.
- (c) The Manager must exercise reasonable care and skill in selecting, authorising and monitoring a person who is authorised pursuant to paragraph (a).
- (d) The Manager is responsible for the acts or omissions of a person authorised pursuant to paragraph (a).
- (e) The acts or omissions of a person authorised pursuant to paragraph (a) is deemed to be an act or omission of the Manager for the purposes of clause 9.10.

9.7 Exclusions

- (a) Except to the extent set out in this Deed, all obligations of the Trustee and the Manager which might otherwise be implied by law are expressly excluded to the extent permitted by law.
- (b) Subject to anything in this Deed expressly to the contrary, nothing restricts the Trustee or the Manager from:
 - (i) dealing with itself on an arm's length basis (as trustee or responsible entity of a trust, managed investment scheme, joint venture or scheme or in another capacity);
 - (ii) being interested in any Contract or transaction with itself (as trustee or responsible entity of a trust, managed investment scheme, joint venture or scheme or in another capacity) or with any Unitholder or retaining for its own benefit profits or benefits derived from any such Contract or transaction;

- (iii) acting in the same or similar capacity in relation to any other trust, managed investment scheme or joint venture; or
- (iv) entering into a transaction with a related entity.

9.8 Discretion and reliance

Subject to anything in this Deed, the Trustee and Manager may each determine whether to exercise, and the manner, mode and time of exercise of their respective powers, in their absolute discretion. Without limiting the foregoing, the Trustee and Manager may each rely on any advice, opinion, or information provided by a Person of a category contemplated by clause 9.2 or clause 9.6, or an adviser or any trustee, custodian, or administrator of any Investment of the Trust.

9.9 Insufficient funds

Neither the Manager nor the Trustee need take any action unless in its opinion the Trust Property is sufficient to indemnify it for any costs and liabilities incurred.

9.10 Liability and indemnification

- (a) None of the Trustee, the Manager, or any current or former director, officer, employee, partner, member, stockholder, controlling Person or agent of the Trustee or the Manager, or any member of the Trustee or the Manager which is not a natural person, any Person serving or having served at the request of the Trustee or the Manager as a director or non-executive officer of another partnership, corporation, limited liability company, joint venture, trust or other enterprise (all of the foregoing Persons being referred to collectively as **Indemnified Parties** and individually as an **Indemnified Party**) shall be liable to the Trust or any Unitholder for any act or omission suffered or taken by such Indemnified Party in its capacity as an Indemnified Party that:
 - (i) is not in material breach of this Deed; and
 - (ii) does not constitute fraud, Gross Negligence, recklessness, wilful misconduct or wilful violation of law.
- (b) To the maximum extent permitted by applicable law, each Indemnified Party shall be fully protected and indemnified by the Trustee out of Trust assets against all liabilities and losses (including amounts paid in respect of judgments, fines, penalties or settlement of litigation, and legal fees and Expenses reasonably incurred in connection with any pending or threatened litigation or proceeding) suffered by virtue of such Indemnified Party's serving as an Indemnified Party with respect to any action or omission suffered or taken that:
 - (i) is not in material breach of this Deed; and
 - (ii) does not constitute fraud, Gross Negligence, recklessness, wilful misconduct or wilful violation of law.
- (c) Each Indemnified Party shall use commercially reasonable efforts to seek recovery under any other indemnity or insurance policies by which such Person is indemnified or covered, as the case may be, but only to the extent that the applicable indemnitor or insurer provides the applicable indemnity or coverage on a timely basis.
- (d) No Indemnified Party shall be entitled to any indemnification pursuant to this clause 9.10 in connection with any internal dispute, claim or action between the Trustee and any of its Affiliates that does not otherwise involve the Trust or an Investment of the Trust.
- (e) The Trustee may advance out of the assets of the Trust expenses, including legal fees, for which any Indemnified Party would be entitled by this Deed to be indemnified upon receipt of an unsecured undertaking by such Indemnified Party to repay such advances if it is

ultimately determined that indemnification for such expenses is not permitted by law or authorised by this Deed, provided, however, that the Trust shall not advance any expenses, including legal fees, to which any Indemnified Party would otherwise be entitled pursuant to this clause 9.10 in connection with a dispute, claim or action brought against such Indemnified Party by a majority in interest of Unitholders.

- (f) Each Indemnified Party may consult with recognised experts (including, but not limited to, legal counsel, accountants, investment bankers, and appraisers), and any action or omission taken or suffered in good faith in reliance and in accordance with the opinion or advice of such experts, to the fullest extent permitted by law, shall be subject to a rebuttable presumption that such action or omission did not materially violate this Deed, did not constitute fraud, Gross Negligence, recklessness, or wilful violation of law, provided, however, that such expert has been selected by the Indemnified Party in good faith and with reasonable care.
- (g) The provisions of this clause 9.10 shall continue to afford protection to each Indemnified Party regardless of whether such Indemnified Party remains in the position or capacity pursuant to which such Indemnified Party became entitled to indemnification under this clause 9.10 and regardless of any subsequent amendment to this Deed. No amendment to this Deed shall reduce or restrict the extent to which these indemnification provisions apply to actions taken or omissions made prior to the date of such amendment. The provisions of this clause 9.10 shall inure to the benefit of the successors, assigns, heirs and personal representatives of the Indemnified Parties.
- (h) Subject to applicable provisions of law and equity, whenever in this Deed the Trustee is permitted or required to make a decision in its 'sole discretion' or 'discretion' or under a grant of similar authority or latitude, or in its 'good faith' or under another express standard, the Trustee shall act under such express standard and shall not be subject to any other or different standard.
- (i) To the extent that, at law or in equity, an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to the Unitholders, neither the Trustee nor any other Indemnified Party acting in connection with the Trust's business or affairs shall be liable to the Trust or to any Unitholder for its good faith reliance on the provisions of this Deed. The provisions of this Deed, to the extent that they restrict or eliminate the duties and liabilities of an Indemnified Party otherwise existing at law or in equity, are agreed by the Unitholders to replace such other duties and liabilities of such Indemnified Party, provided that nothing herein shall constitute a waiver or limitation of any rights that a Unitholder or the Trustee may have under applicable securities laws or other laws and that may not be waived or limited under such applicable laws.
- (j) For the avoidance of doubt, the Trustee will hold in trust for each Indemnified Party other than the Trustee and the Manager the rights of that Indemnified Party under this Deed.

9.11 Information from Unitholders

Each Unitholder agrees promptly to provide the Trustee with information about such Unitholder that the Trustee reasonably requests when necessary to comply with regulatory, legal, tax or other requirements related to the business of the Trust or the consummation, ownership, or disposal of an Investment. The Trustee agrees that such information will be kept confidential by the Trustee, except as required by applicable law or legal process, provided, however, that the Trustee may disclose such information or portions thereof to those directors, officers, employees, and professional advisers of the Trustee who need to know such information for the purpose of assisting the Trustee in its efforts to comply with such regulatory, legal or tax requirements.

9.12 Unitholders' liability

- (a) Subject to clauses 6.5 and 24.1, and notwithstanding clause 9.10, but without limiting the liability of a Unitholder in respect of a breach of its obligations under this Deed or otherwise in respect of the Trust, the liability of a Unitholder is limited to its Undrawn Commitment(s) (if any). This is subject to any separate written agreement between a Unitholder and the Trustee.
- (b) Joint Unitholders and former joint Unitholders are jointly and severally liable in respect of all:
 - (i) obligations and payments in respect of their Units; and
 - (ii) their obligations in respect of the Trust, including under this Deed.

10 Distributions and Allocations

10.1 Application of income and distribution provisions

If the Trustee makes an election under clause 10.16 for the provisions contained in Schedule 3 to apply that is effective in respect of a particular Income Year, then the provisions of this clause 10 will operate subject to, and will be qualified by, the provisions of Schedule 3 for that Income Year.

10.2 Income of the Trust

- (a) The Trustee shall determine the income of the Trust (the *Income of the Trust*).
- (b) If no determination is made in accordance with clause 10.2(a) prior to the end of the relevant period, the Income of the Trust is:
 - (i) for any Quarter, the operating profit after abnormal items and extraordinary items of the Trust for that Income Year, determined in accordance with Australian generally accepted accounting principles or such other principles as the Trustee, with the approval of the Auditor, may have adopted; and
 - (ii) for any Income Year, the greater of:
 - (A) the sum of the amount determined for each Quarter in the Income Year; and
 - (B) the Net Income for the Income Year.

10.3 Capital

- (a) The Trustee may pay out of the capital of the Trust all Expenses, costs and liabilities incurred in connection with the Trust.
- (b) The Trustee may distribute all or part of the capital of the Trust fund in accordance with the entitlements of Unitholders pursuant to this Deed.

10.4 Present entitlement and impact of transfers

- (a) On the last day of each Income Year:
 - (i) each Ordinary Unitholder which holds Units in a Series will have an absolute vested and indefeasible interest in so much of the Income of the Trust for that Income Year (less any portion of that Income previously distributed) available to be distributed to Ordinary Unitholders under clause 10.7(a) or clause 10.8(a) (as applicable) in respect of that Series in proportion to the proportion which their Unitholding in respect of that Series bears to the Unitholdings of all the Ordinary Unitholders in respect of that Series (adjusted (if required) to give effect to clause 27.6(b)); and

- (ii) each Sponsor Unitholder will have an absolute vested and indefeasible interest in so much of the Income for that Income Year (less any portion of that Income previously distributed) available to be distributed to Sponsor Unitholders under clause 10.7(b) or clause 10.8(b) (as applicable) in proportion to the proportion which their Unitholding bears to the Unitholdings of all of the Sponsor Unitholders.
- (b) Income allocated but not distributed when a transfer or transmission of Units is registered remains credited to the transferor. For the purposes only of calculating an Ordinary Unitholder's and a Sponsor Unitholder's distribution entitlement under clause 10.7 or clause 10.8 (as applicable), transfers of Units are to be disregarded.

10.5 Timing of distributions

The Trustee may make distributions at any time, but must:

- (a) not reinvest Disposition Proceeds (other than proceeds from a Short Term Investment) and must make a distribution of such Disposition Proceeds as soon as practicable after receipt and, in any event, no later than 90 days after receipt by the Trustee;
- (b) effect a distribution when required under clause 18.5; and
- (c) after the end of each Income Year, distribute all of the Income of that Income Year (other than proceeds from a Short Term Investment that has not already been distributed to those persons registered as Unitholders immediately before the end of the relevant Income Year).

10.6 Distribution of securities

- (a) The Trustee may at any time make a distribution of:
 - (i) Traded Securities, provided that the Traded Securities are able to be traded on a financial market and will not, immediately following distribution of the Traded Securities to Unitholders, be restricted, escrowed or subject to a holding lock pursuant to the rules of the relevant financial market; and/or
 - (ii) Non-Traded Securities.
- (b) In the case of a distribution of Traded Securities, the Traded Securities will be valued at:
 - (i) the average of the closing trading price of the relevant class of Traded Securities on the 10 most recent trading days prior to the date on which their distribution is effected (**Trading Value**); or
 - (ii) if a Trading Value is not readily available, the average of the closing bid price of the relevant class of Traded Securities on the ten most recent trading days prior to the date on which their distribution is effected,

and after the date of such distribution, the Trustee will have no liability to the relevant Unitholder for any subsequent diminution in the value of the relevant Traded Securities so distributed, any such diminution being deemed as having occurred after those Traded Securities are alienated from Trust Property.

- (c) In the case of a distribution of Non-Traded Securities, the Non-Traded Securities will be valued shortly before the distribution in good faith by applying the valuation guidelines of AIC, modified as necessary on a case-by-case basis.
- (d) In respect of a proposed distribution of Traded Securities or Non-Traded Securities, a Unitholder (**Requesting Unitholder**) may request the Trustee to sell the Traded Securities or Non-Traded Securities (as the case may be) that would otherwise be distributed to the Requesting Unitholder and remit the net proceeds of sale to the Requesting Unitholder as a Cash distribution. The Trustee will endeavour, but is not obliged, to accommodate such a

request. Notwithstanding anything to the contrary in this Deed, any gain, loss or Expense incurred by the Trust in respect of such sale will be attributed to, or borne by (as the case may be) the Requesting Unitholder. The Trustee will have absolute authority as to the timing of the sale, and the sale price, of such Traded Securities or Non-Traded Securities and will have no liability whatsoever in respect of the time or price at which the relevant Traded Securities or Non-Traded Securities are sold.

- (e) Notwithstanding anything to the contrary in this clause 10.6, the Trustee may, from time to time in connection with a Trust recapitalisation or similar transaction and subject to such limitations or restrictions as the Trustee may impose, in its sole discretion, offer each Unitholder the opportunity to express its preference to receive distributions of assets in lieu of cash for such Investments as the Trustee determines in its sole discretion. Each Unitholder electing to receive a distribution in kind within the time period provided for by the offer shall receive such asset in kind, subject to any such applicable limitations or restrictions. In the case of any Unitholder electing to receive a distribution in kind, the value of any assets distributed in kind shall be determined by Trustee based on the disposition price of the asset for the portion of such asset otherwise disposed of with respect to non-electing Unitholders.

10.7 2023 Series Distribution Waterfall

Subject to clause 25.4, distributions of Income or Trust Property (including on termination of the Trust) referable to Ordinary Units in the 2023 Series must be effected such that:

- (a) the Ordinary Unitholders who hold Ordinary Units in the 2023 Series receive such distributions in proportion to their Ordinary Unitholding in the 2023 Series (adjusted (if required) to give effect to clause 27.6(b)); provided that
- (b) if an Ordinary Unitholder has received, in respect of the 2023 Series, cumulative distributions equal to its Paid Up Capital in respect of the 2023 Series, any further distributions of Income or Trust Property (including on termination of the Trust) which would otherwise be made 100% to that Ordinary Unitholder pursuant to paragraph 10.7(a) in respect of the 2023 Series, shall instead be made:
 - (i) 90% to the Ordinary Unitholder; and
 - (ii) 10% to the Sponsor Unitholders in proportion to their Sponsor Unitholdings.
- (c) For the avoidance of doubt, clauses 10.8 to 10.11 do not apply to Ordinary Units in the 2023 Series.

10.8 Non-2023 Series Distributions

Subject to clauses 10.7 and 25.4, distributions of Income or Trust Property (including on termination of the Trust) referable to Ordinary Units in a particular Series must be effected such that:

- (a) each Ordinary Unitholder who holds Ordinary Units in the relevant Series receives an amount equal to their Distribution Entitlement (adjusted (if required) to give effect to clause 27.6(b)); and
- (b) each Sponsor Unitholder receives an amount equal to the Carry calculated in accordance with clause 10.11 in proportion to their Sponsor Unitholding.

10.9 Distribution Entitlement

For the purposes of clause 10.8, an Ordinary Unitholder's Distribution Entitlement will be determined in accordance with the following formula:

$$DE = DA \times \frac{A}{B}$$

Where:

- DE is the Ordinary Unitholder's Distribution Entitlement to the portion of Income and Trust Property referable to the Series of Ordinary Units held by the Ordinary Unitholder that the Trustee proposes to distribute, calculated in accordance with this clause 10.9.
- DA is the Distributable Amount referable to the Series of Ordinary Units held by the Ordinary Unitholder, calculated in accordance with clause 10.10.
- A is the aggregate number of Ordinary Units in the relevant Series held by the particular Ordinary Unitholder at the time the Trustee calculates the Distribution Entitlement.
- B Is the total number of Ordinary Units on issue in the relevant Series at the time the Trustee calculates the Distribution Entitlement.

10.10 Distributable Amount

For the purposes of clause 10.9, the Distributable Amount (or DA) referable to a particular Series of Ordinary Units will be determined in accordance with the following formula:

$$DA = INC + TP - C$$

Where:

- DA is the Distributable Amount referable to the Series of Ordinary Units in respect of which the Trustee is proposing to make a distribution of Income or Trust Property.
- INC is the Income of the Trust referable to the relevant Series of Ordinary Units that the Trustee is proposing to distribute.
- TP is the Trust Property (but excluding Income to the extent already counted in 'INC') referable to the relevant Series of Ordinary Units that the Trustee is proposing to distribute.
- C is the Carry referable to the relevant Series of Ordinary Units, calculated in accordance with clause 10.11.

10.11 Carry

- (a) For the purposes of clause 10.8 and 10.10, the Carry (or C) referable to a particular Series of Ordinary Units will be determined in accordance with the following formula:

$$C = 0.1 \times (INC + TP + TD - PC) - CAP$$

Where:

- C is the Carry referable to the Series of Ordinary Units in respect of which the Trustee is proposing to make a distribution of Income and Trust Property.

INC	is the Income of the Trust referable to the relevant Series of Ordinary Units that the Trustee is proposing to distribute.
TP	is the Trust Property (but excluding Income to the extent already counted in 'INC') referable to the relevant Series of Ordinary Units that the Trustee is proposing to distribute.
TD	is the total distributions of all Carry and all Distribution Entitlements that the Trustee has previously paid, or previously resolved to pay, to Sponsor Unitholders and to Ordinary Unitholders in respect of the relevant Series prior to the calculation of the Distributable Amount in respect of which the Trustee is seeking to calculate the Carry (if any).
PC	is the aggregate of all Paid Up Capital referable to the relevant Series at the time of calculation of the Carry.
CAP	is the sum of all Carry that the Trustee has previously paid, or previously resolved to pay, to Sponsor Unitholders in respect of the relevant Series prior to the calculation of the Distributable Amount in respect of which the Trustee is seeking to calculate the Carry (if any).

- (b) For the avoidance of doubt, where the Carry calculated in accordance with this clause 10.11 for a particular Series at a point in time is nil or negative:
- (i) there is deemed to be no Carry in respect of the relevant period, and no Carry is payable or allocable to the Sponsor Unitholders; and
 - (ii) there is no liability or obligation arising for any Sponsor Unitholder to make any contribution to the Trust or any Unitholder to make up for, or otherwise in connection with, any negative Carry or underperformance.

10.12 Withholding

- (a) The Trustee may withhold, at the maximum applicable statutory rate, and pay as directed by any law, any withholding of Taxes payable by the Trustee on any distribution to a Unitholder imposed as a result of such Unitholder's status as a Unitholder (including in each case such portion of any amounts in connection with an audit for which the Trust is liable and that the Trustee determines, in its sole discretion, is attributable to such Unitholder or former Unitholder) (**Withheld Amount**).
- (b) A Withheld Amount withheld from a distribution to a Unitholder will be deemed to have been a distribution to the relevant Unitholder as at the time the Withheld Amount is paid by the Trustee.
- (c) Any amounts paid by the Trustee on account of Taxes attributable to a Unitholder, but not withheld, will be a loan from the Trust to the Unitholder, which loan:
 - (i) will, at the option of the Trustee, be repayable on demand by the Trustee or discharged out of distributions or other payments to which the Unitholder would otherwise be entitled under this Deed; and

- (ii) may, at the option of the Trustee, bear interest at the rate of the Bank Bill Rate, calculated from the date that loan is made to the date of repayment.
- (d) Further and in addition to any other indemnity provision of this Deed, unless otherwise agreed by the Trustee in writing, each Unitholder agrees severally to indemnify the Trust, the Trustee and the Manager (and their respective directors, officers, employees, Related Bodies Corporate, agents and Associates) against any liability for Taxes payable on any distribution to that Unitholder which the Trust or that relevant person incurs in connection with any such distribution, as contemplated by clause 10.12(c) or otherwise, except to the extent that any such liability (including any liability for penalties, additions to tax or interest) is the direct result of Gross Negligence, fraud or wilful misconduct of the Trustee or such relevant person.
- (e) It is understood that if any entity in which the Trust directly or indirectly invests withholds or makes any payment to any governmental authority in respect of any tax liability of any Unitholder, then any such amount shall be treated in the manner provided in this clause 10.12.
- (f) The provisions of this clause 10.12 shall survive the dissolution, winding up and termination of the Trust or the transfer or withdrawal of a Unitholder from the Trust.

10.13 Use of Distributable Cash to fund capital contributions

- (a) The Trustee may determine to retain Cash that would otherwise be distributable under this clause 10 to an Ordinary Unitholder (**Distributable Cash**) to pay all or part of any amount required to be paid by the Ordinary Unitholder under the terms of this Deed.
- (b) The amount of Distributable Cash so retained will be deemed to have been distributed under this clause 10 to the Ordinary Unitholder and then drawn down under the relevant provision of clause 6.5.
- (c) The Trustee will notify the relevant Ordinary Unitholder in writing of the retention of the Distributable Cash under this clause 10.13.

10.14 Currency of Cash distributions

All Cash distributions must be made in Australian dollars.

10.15 Distribution notice

The Trustee must, as soon as practicable, give to each Unitholder a notice containing such information the Trustee determines in relation to the proposed distribution, but including:

- (a) the proposed distribution date;
- (b) the amount to be distributed to the Unitholder;
- (c) a summary description of the manner in which the proposed distribution arose; and
- (d) details of imputation credits, if any, attaching to the proposed distribution.

10.16 Trustee elections

- (a) The Trustee may elect in writing for the provisions contained in Schedule 3 to apply on and from the date specified in the election. Any such election will continue to have effect subject to the provisions contained in Schedule 3.
- (b) The Trustee may elect in writing for subsections 276-20(2) and (3) of the Tax Act to apply to each Class or Series of Units of the Trust for the Income Year in which the election is made and for every subsequent Income Year.

- (c) The Trustee may notify the Unitholders of the making of an election under this clause 10.16.
- (d) Nothing in this clause 10.16 imposes an obligation on the Trustee to:
 - (i) elect to apply the AMIT Regime to the Trust;
 - (ii) elect to treat each Class of Units as a separate AMIT;
 - (iii) facilitate the Trust being able to elect to apply the AMIT Regime to the Trust;
 - (iv) make any amendments to this Deed; or
 - (v) make any of the elections provided for under this clause 10.16.
- (e) Where the Trust qualifies as a managed investment trust (as that term is defined in the Tax Act), the Trustee must make a choice under section 275-115 of the Tax Act that covers the Trust within the time period set out in section 275-115.

10.17 Impact of Schedule 3 if the Trust is not an AMIT

- (a) If the Trust is not an AMIT for an Income Year but the Trustee purports to exercise a power under Schedule 3 on the basis that the Trustee believes that the Trust is or will be an AMIT for that Income Year, then the following provisions apply in respect of the exercise of the relevant power.
- (b) The exercise of the powers by the Trustee will, to the maximum extent possible but subject to the following provisions, be treated as a proper exercise of the Trustee's powers under this Deed or at law.
- (c) To the extent that the operation of any of these powers depends, for its operation, on the Trust being an AMIT for the relevant Income Year, the Trust will be treated as if it were an AMIT for the purposes of that power.
- (d) Nothing in Schedule 3 or the terms of this clause will be taken to invalidate any action that is undertaken by the Trustee pursuant to its powers under clause 10 and those powers may be exercised by the Trustee despite any contrary powers provided under Schedule 3.

10.18 Classification of items

Without limiting clause 10.2, the Trustee has the power to determine:

- (a) the classification of any item as being Income of the Trust, on income account, on capital account, or otherwise;
- (b) the extent to which reserves or provisions need to be made; and
- (c) whether any item should be recognised as it is received or as it accrues (but not yet received).

10.19 Tax

The Trustee may take any action that it considers is necessary (including without limitation by distributing or applying capital to or for the benefit of the Unitholders) to ensure to the extent possible that any Tax liability under the Tax Act in respect of the Net Income of the Trust is borne by the Unitholders in proportions that correspond with the shares of Income of the Trust to which they are presently entitled, and that the Trustee incurs no liability to pay Tax under section 99 or section 99A of the Tax Act as trustee of the Trust.

10.20 Reserves

Without limiting clause 6.4, the Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of

income received or receivable in an Income Year may be treated as having been received in an Income Year and an Expense paid or payable in an Income Year may be treated as having been paid in a different Income Year.

10.21 Excess distribution

If the Trustee determines that the total amount of the distributions actually made to Unitholders during or with respect to an Income Year exceeds the Income of the Trust for the Income Year, the Trustee may treat the excess as a distribution of capital.

11 Expenses and Management Fee

11.1 Reimbursement of Organisational and Operating Expenses

Subject to clause 26.2 and in addition to the Administrative Fee charged pursuant to clause 11.3(c), the Trustee is entitled to pay out of the assets of the Trust or if paid by or on behalf of the Trustee, reimburse itself and the Manager for, all expenditures made on behalf of the Trust, including without limitation:

- (a) all reasonable expenses incurred in the operation of the Trust;
- (b) all reasonable expenses of legal, regulatory, accounting, information technology, audit, investment banking, tax preparation, compliance, reporting, consulting, research, due diligence, and other professional services to the Trust (including any expenses and fees of any fund administrator, depositary and any other professional service providers to the Trust) and filing and similar fees paid on behalf of the Trust, including such expenses with respect to transactions that are not consummated, in each case to the extent that such expenses are not reimbursed by entities in which the Trust invests or proposes to invest, and including in relation to:
 - (i) the establishment and launching of the Trust and the preparation and execution of this Deed and the initial issue of Units; and
 - (ii) the promotion of the Trust, including the preparation, printing and distribution of the information memoranda and any other disclosure documents;
- (c) all custody, transfer, registration and similar expenses incurred by the Trust;
- (d) all brokerage and finders' fees and commissions and discounts incurred in connection with the purchase or sale of securities;
- (e) all interest, fees, costs and other expenses related to any borrowing of the Trust;
- (f) all extraordinary expenses, such as reasonable litigation expenses;
- (g) all indemnification liabilities;
- (h) all expenses incurred in connection with the obtaining and maintaining of insurance policies by or on behalf of the Trust, Investments, the Trustee and the Manager;
- (i) all fees and expenses of winding up the Trust;
- (j) all Taxes, fees, or other governmental charges levied against the Trust; and
- (k) other similar fees and expenses,

(the **Organisational and Operating Expenses**).

11.2 Management Fee

- (a) In consideration of the Manager's obligations under this Deed, the Trustee must pay to the Manager (out of Trust Property) a Management Fee in accordance with this clause 11.2.

- (b) The Management Fee (plus GST) will be calculated in respect of each Series and accrued on a daily basis and will be payable by the Trustee to the Manager Quarterly in arrears, provided that:
 - (i) each Unitholder will bear its pro rata share (based on its Series Proportion) of the Management Fee for each Series in which it holds Units;
 - (ii) the Manager may exercise its discretion as to when to call for or defer any such actual payment by the Trustee;
 - (iii) the Trustee is not obliged to make any payment if, at the time required for payment, the Trustee does not hold sufficient Cash proceeds in Trust Property to fund the payment, in which case any non-payment will not constitute a breach of the terms of this Deed and the Trustee must pay any unpaid amounts as and when it has the Cash proceeds to do so or otherwise as directed by the Manager; and
 - (iv) any unpaid amounts as contemplated by paragraphs (b)(iii) and (iv) will not bear interest.

11.3 Allocation of fees, Expenses and other Trust Liabilities

- (a) Each Series shall bear fees, Expenses and other Trust Liabilities, as allocated among the Series by the Trustee in good faith and on a fair and reasonable basis.
- (b) Each Ordinary Unitholder shall be allocated:
 - (i) its pro rata share (determined on the basis of its Series Proportion but subject to clause 27.6(b)) of fees (including the Management Fee pursuant to clause 11.2), Expenses and other Trust Liabilities that are attributable to a Series in which it holds Units; and
 - (ii) its pro rata share (determined on the basis of its Trust Proportion) of fees (including the Administrative Fee pursuant to clause 11.3(c)), Expenses and other Trust Liabilities that are not attributable to a Series.
- (c) An annual administrative fee will be payable by the Trustee to the Manager (out of Trust Property) prior to the commencement of each calendar year (the **Administrative Fee**). The Administrative Fee will be determined by the Trustee and may be adjusted on an annual basis (including in line with CPI).

12 Allocation and acceptance of Investment opportunities

By making a Commitment, each Ordinary Unitholder acknowledges and agrees that neither the Trustee nor the Manager shall have any obligation to allocate or offer to the Trust any potential Investment opportunity, provided that the Manager and the Trustee agree (and agree to procure) that in the event there is an opportunity to make a follow-on investment in relation to any existing Investment of the Trust:

- (a) unless otherwise determined by the Trustee in its sole discretion, the Trust shall be allocated a pro rata participation right (based on its existing investment in the relevant Investment) in respect of the follow-on Investment;
- (b) the Trustee will determine in its sole discretion whether the Trust will make a follow-on Investment, subject to there being sufficient Follow-on Funding Reserved Amounts in respect of the relevant Series to allow Ordinary Unitholders who participated in the initial which the follow-on Investment relates to participate in that follow-on Investment;
- (c) unless determined otherwise by the Trustee in its sole discretion (and subject to clause 27.6(b)), each follow-on investment will be allocated between Unitholders in the relevant Series pro rata based on their respective Series Proportions; and

- (d) including if there are insufficient Follow-on Funding Reserved Amounts in respect of the relevant Series (determined in accordance with paragraph (b)) in order to fund 100% of the Trust's allocation to relevant the follow-on Investment, the Trustee may determine (in its discretion) to:
 - (i) allocate the remaining portion of the Trust's allocation to such Ordinary Unitholders who do not hold Ordinary Units in the relevant Series in accordance with clause 6.1(d); and/or
 - (ii) offer the remaining portion to one or more other Persons.

13 Business Activities with Affiliates

- (a) The Trustee may from time to time in the conduct of Trust affairs consult with, utilise the services of, or otherwise engage in business activities with one or more Affiliates of the Trustee.
- (b) Manager Affiliates may have business interests and engage in business activities in addition to those connected with the Trust, which interests and activities may be similar to or different from those of the Trust and may include investment activities and providing investment advisory services and management services for persons or clients not associated or affiliated with the Trust or the Manager Affiliates.

14 Retirement of the Manager

14.1 Voluntary retirement

The Manager may at any time retire as manager of the Trust if the retirement is approved by Special Resolution of the Ordinary Unitholders.

14.2 Mandatory retirement

The Manager must retire if the "Manager" (as such term is defined in the PEP Gateway Trust Deed) of PEP Gateway retires or is removed from its role in accordance with the terms of the PEP Gateway Trust Deed and is replaced by a Person other than a Manager Affiliate.

14.3 Procedure on retirement

If the Manager retires from office under clause 14.1 or 14.2:

- (a) the retirement will not take effect until a new Manager has been approved by Special Resolution of the Ordinary Unitholders and the new Manager undertakes (on such terms as approved by the Ordinary Unitholders by Special Resolution) by deed to be bound by this Deed;
- (b) on or as soon as practicable after retirement of the Manager, the Trustee shall settle with the retiring Manager the amount of any sums payable to the retiring Manager or by the retiring Manager in accordance with this Deed;
- (c) Sponsor Distributions will be modified in accordance with clause 14.4;
- (d) on appointment of the new Manager, the Trustee must issue such number of Sponsor B Units to the new Manager or other persons the new Manager nominates (as directed by the new Manager) at an Issue Price representing (proportionately) the Net Asset Value at the date of issue (as adjusted to reflect the rights attaching to those Sponsor B Units); and
- (e) any accrued rights of the retiring Manager and its directors, officers, employees, Related Bodies Corporate, agents and Associates under this Deed survive retirement of the retiring Manager.

14.4 Modification of Sponsor Distributions

Notwithstanding anything to the contrary in this Deed, from the date of retirement of the Manager from office (the **Retirement Date**), the Trustee must effect Sponsor Distributions as follows:

- (a) if the Manager retires under clause 14.1, all Sponsor Distributions which are referable to a Series which is in existence at the Retirement Date will be allocated to the Outgoing Manager Sponsor Unitholders exclusively;
- (b) if the Manager is required to retire under clause 14.2, all Sponsor Distributions which are referable to a Series which is in existence at the Retirement Date will be allocated as follows:
 - (i) 80% of the Sponsor Distributions will be allocated to the Outgoing Manager Sponsor Unitholders (in proportion to their Unitholdings);
 - (ii) 20% of the Sponsor Distributions will be allocated to the New Manager Sponsor Unitholders (in proportion to their Unitholdings);
- (c) all Sponsor Distributions which are referable to a Series which was not in existence at the Retirement Date will be paid exclusively to the New Manager Sponsor Unitholders (in proportion to their Unitholdings); and
- (d) in addition to any amount payable under paragraph (b) to the Outgoing Manager Sponsor Unitholders (the **Relevant Amount**), the Trustee must pay simple interest on such amount per annum equal to 2% plus the Bank Bill Rate, calculated from the Retirement Date until the date of payment of the Relevant Amount.

15 Retirement or Removal of the Trustee

15.1 Retirement

The Trustee may at any time retire as trustee of the Trust if the retirement is approved by Special Resolution of the Ordinary Unitholders.

15.2 Removal without cause

The Trustee may be removed at any time and for any reason if the removal is approved by a Special Resolution of the Unitholders.

15.3 Removal with cause

The Trustee must retire if:

- (a) the Trustee ceases to carry on business;
- (b) the Trustee suffers an Insolvency Event and, within 90 days of the Insolvency Event first occurring, removal of the Trustee is approved by a Special Resolution of the Ordinary Unitholders;
- (c) the Trustee remains convicted of fraud with respect to the Trust (after all appeals and expiration of time to appeal) and within 90 days after the later of the date on which the final appeal is determined and the date on which the time to appeal has expired, removal of the Trustee is approved by a Special Resolution of the Ordinary Unitholders; or
- (d) a court of competent jurisdiction has finally determined (after all appeals and the expiration of time to appeal) that the Trustee has materially breached this Deed or engaged in Gross Negligence or wilful misconduct and, within 90 days of the date of final determination (after all appeals and the expiration of time to appeal), removal of the Trustee is approved by Special Resolution of the Ordinary Unitholders.

15.4 Procedure on removal

If the Trustee retires from office under clause 15.1, 15.2 or 15.3:

- (a) the retirement will not take effect until a new Trustee has been approved by a Special Resolution of the Ordinary Unitholders and the new Trustee undertakes (on such terms as approved by Special Resolution of the Ordinary Unitholders) by deed to be bound by this Deed;
- (b) on or as soon as practicable after retirement of the Trustee, the Manager shall settle with the retiring Trustee the amount of any sums payable to the retiring Trustee or by the retiring Trustee in accordance with this Deed; and
- (c) any accrued rights of the retiring Trustee and its directors, officers, employees, Related Bodies Corporate, agents and Associates under this Deed survive retirement or removal of the Trustee.

16 Amendments

- (a) This Deed may be amended by the Trustee in any of the following circumstances:
 - (i) without Unitholder consent, if the Trustee determines (acting reasonably and in good faith) that the amendment:
 - (A) is in the best interests of Unitholders as a whole; and
 - (B) would not expose the Trustee or the Trust to liabilities or risks that the Trustee deems unacceptable;
 - (ii) without Unitholder consent, to the extent necessary (as determined by the Trustee, acting reasonably and in good faith) to cure any ambiguity or fix any error following a re-designation of Ordinary Units in accordance with, and to give effect to the terms of, clause 4.5(b); and
 - (iii) if the amendment is approved by Ordinary Resolution of the Ordinary Unitholders, provided that any such amendment that would:
 - (A) adversely affect a Unitholder's rights or obligations under this Deed in a manner which is disproportionate to the effect on the rights or obligations under this Deed of other Unitholders holding Units in the same Class, must also be approved by that Unitholder; and
 - (B) increase the liability of the Manager or the Trustee under this Deed or otherwise adversely affect the rights or obligations of the Manager or the Trustee under this Deed must also be approved by the Manager or the Trustee (as the case may be).
- (b) Any amendment of this Deed must be effected by supplemental deed.

17 Assignment and Transfer

17.1 Transfer of Units

A Unitholder may only dispose, transfer, gift, assign, sell, transmit or otherwise part with any of its Units:

- (a) with the consent of the Trustee or the Manager, which consent (subject to paragraph (c)) may be withheld at the absolute discretion of the Trustee or the Manager;
- (b) as expressly permitted in accordance with the terms of this Deed;

- (c) to an Affiliate of the Unitholder (or to another person in connection with the merger of a Unitholder's business) provided that:
 - (i) in the case where the transfer is to an Affiliate of the Unitholder (the **Initial Unitholder**), the Affiliate to which Units are transferred covenants with the Trustee (if required by the Trustee, acting reasonably), at the time of the transfer that while it holds Units it will remain an Affiliate of the Initial Unitholder; and
 - (ii) the Trustee or the Manager consents to the transfer, which consent must not be unreasonably withheld;
- (d) in the case of a Trustee Unitholder, to the replacement trustee, responsible entity, custodian, sub custodian or nominee of the trust or other collective investment vehicle for which the Trustee Unitholder holds the Units on trust or for the benefit of, provided that the transfer would not result in a change in the beneficial ownership of the Units; or
- (e) in accordance with clause 8.

17.2 Method of transfer

A transfer of Units under this Deed (other than a transfer under clause 8) must be effected by an instrument in writing which contains an undertaking by the transferee to be bound by the terms of this Deed and which is otherwise in a form approved by the Trustee. The instrument must be executed by, or on behalf of, the transferor and transferee.

17.3 Registration of transfer

- (a) The instrument of transfer must be left for registration at the address where the Register is kept as soon as reasonably practicable after execution of the instrument of transfer. It must be left together with any information that the Trustee properly requires to show the right of the transferor to make the transfer.
- (b) The transfer must bear evidence that the appropriate amount of stamp duty (if any) has been paid.
- (c) A transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered on the Register in respect of the Units.

17.4 Adjustment of Unitholding and Commitments

On a transfer, transmission or cancellation of Units under this clause 17 or otherwise in accordance with this Deed, the Unitholding, Commitment(s) and Undrawn Commitment(s) (as applicable) of the Unitholder will be adjusted to reflect the transfer, transmission or cancellation (as the case may be) of the relevant Units.

17.5 Notice of transfer

The Trustee must give the relevant Unitholder reasonable notice of its intention to:

- (a) sell any Units under clause 25.5 or 25.9; or
- (b) give its consent to a transfer under clause 17.1(a).

17.6 Indemnity

Without limiting any other indemnity in this Deed, to the fullest extent permitted by law, unless otherwise agreed to by the Trustee in writing, the transferring Unitholder will also indemnify the Trustee, the Manager and their respective Affiliates for any losses, claims, damages, liabilities or Taxes (including interest, penalties, additions to Tax, and associated charges) to which any of them may become subject in connection with such transfer or attempted transfer, except to the extent such

losses, claims, damages, liabilities or Taxes are caused by an act or omission of the Trustee, the Manager or their respective Affiliates that constitutes a material breach of this Deed or constitutes fraud, Gross Negligence, recklessness, wilful misconduct or wilful violation of law. The foregoing provisions shall survive any termination of this Deed and the dissolution and winding up of the Trust.

18 Dissolution and Winding Up

18.1 Trustee may terminate

The Trustee may terminate the Trust if:

- (a) the Manager or the Trustee retires or (in the case of the Trustee) is removed under clause 14 or 15 (as the case may be) and no person has, within 90 days of the Retirement Trigger Date, been appointed by the Ordinary Unitholders under clause 14.3 or 15.4 (as the case may be) to replace the retiring Manager or the Trustee (as the case may be); or
- (b) it determines in good faith that:
 - (i) changes in any applicable law or regulation would have a material adverse effect on the continuation of the Trust; or
 - (ii) termination is necessary or desirable in order for the Trust not to be in material violation of any material law or regulation (including any applicable rule against perpetuities).

18.2 Trustee to give notice

The Trustee must, in respect of an exercise of its rights under clause 18.1(b), use commercially reasonable efforts to give at least three months' advance notice to the Unitholders of the new termination date of the Trust.

18.3 Unitholders may terminate

- (a) The Ordinary Unitholders may at any time terminate the Trust if approved by Special Resolution of the Ordinary Unitholders, where:
 - (i) the Manager or the Trustee retires from office under clause 14 or 15 (as the case may be) and no person has, within 90 days of the Retirement Trigger Date, been appointed by the Ordinary Unitholders under clause 14.3 or 15.4 (as the case may be) to replace the retiring Manager or the Trustee (as the case may be); and
 - (ii) in the case where a replacement Trustee has not been appointed under clause 15.4 within 90 days of the Retirement Trigger Date, the Ordinary Unitholders have, by Ordinary Resolution, appointed a person to act as a liquidating trustee, the sole purpose of which liquidating trustee will be to give effect to termination of the Trust pursuant to this clause 18.3.
- (b) For the purpose of clause 18.2 and this clause 18.3, **Retirement Trigger Date** means:
 - (i) in respect of the Manager, the date on which a resolution is passed under clause 14.1 or the date on which the Manager is required to retire pursuant to clause 14.2; and
 - (ii) in respect of the Trustee, the date on which a resolution is passed under clause 15.1, 15.2, 15.3(b), 15.3(c) or 15.3(d) or the date on which the Trustee ceases to carry on business.

18.4 Issue and redemption stops

From the date that a notice is given under clause 18.2 or the effective date of the resolution under clause 18.3 (as appropriate), the issue and redemption of Units stops.

18.5 Action on termination

On termination of the Trust, the Trustee must:

- (a) subject to clause 18.9, as soon as practicable realise all Trust Property by selling, calling in and converting into money the Trust Property; and
- (b) pay, discharge or provide for all Trust Liabilities and expenses of termination.

18.6 Realisation of Trust Property

The Trustee may postpone realising Trust Property if it reasonably determines that such postponement is necessary for the proper and orderly realisation of the Trust Property and will not be responsible for any resulting loss unless caused by its negligence or breach of trust.

18.7 Auditing of winding-up accounts

The Trustee must, if a court so requires, cause the accounts of the winding-up to be independently checked and signed-off by a registered company auditor or firm of chartered accountants of which at least one partner is a registered company auditor and, in either case, independent of the Auditor.

18.8 Transfer of assets

Despite clause 18.5, the Trustee may, having regard to the interests of all Unitholders and only if approved by Special Resolution of the Ordinary Unitholders:

- (a) appropriate Investments out of the Trust Property; and
- (b) transfer those Investments to any Unitholder which gives written approval of the transfer, in satisfaction of that person's or those persons' entitlement to the Trust Property. The Expenses incurred in transferring the assets will be borne by the Unitholder or Unitholders to whom the assets are transferred.

18.9 Retention of assets

- (a) The Trustee may retain under its control for as long as it thinks fit, that part of the Trust Property which in its reasonable opinion may be required to:
 - (i) meet any outgoings or liabilities (actual or contingent) in respect of the Trust; or
 - (ii) fund any existing commitments of the Trust made prior to termination of the Trust in respect of any Investments.
- (b) If any part of the Trust Property retained is ultimately found not to be required, then it will remain subject to the Trust for conversion and distribution under clause 18.5.

19 Reports**19.1 Appointment of Auditor**

- (a) The Trustee must appoint a registered company auditor to be the Auditor of the Trust.
- (b) The Trustee shall promptly notify the Unitholders following any change of the Auditor so appointed.

19.2 Remuneration of Auditor

The remuneration of the Auditor will be fixed by the Trustee.

19.3 Duty to Keep Proper Records

The Trustee must cause proper books of account to be kept in relation to the Trust and will allow the Auditor and the Unitholders to inspect them during normal business hours.

19.4 Preparation

The accounts of the Trust must be prepared in accordance with Australian generally accepted accounting principles.

19.5 Audit

The Trustee must cause the Auditor to audit the accounts of the Trust at the end of each Financial Year (the **Audited Accounts**).

19.6 Provision of Audited Accounts to Unitholders

The Trustee will cause a copy of the Audited Accounts for the period ending 31 December to be provided to each Unitholder.

19.7 Reports

The Trustee must give Unitholders the financial reports (if any) specified in the information memorandum or any other disclosure document relating to the Trust and at the times indicated in such document (in each case as updated from time to time).

19.8 Application of Accounting Principles and Standards

- (a) Where the effect of this Deed is that a value or amount is to be calculated for Trust operational purposes by applying Australian generally accepted accounting principles or accounting standards as generally accepted or in force from time to time, the value or amount is to be calculated for Trust operational purposes by applying such Australian generally accepted accounting principles or accounting standards determined by the Trustee.
- (b) Without limiting the generality of paragraph (a), values or amounts required by this Deed to be calculated for Trust operational purposes include:
 - (i) Trust Liabilities;
 - (ii) the Income of the Trust;
 - (iii) the Net Asset Value;
 - (iv) the amount to be paid (if any) on a withdrawal from the Trust;
 - (v) remuneration or fees payable to the Manager; and
 - (vi) the value of an investment of the Trust.

20 Meetings of Unitholders and Written Resolutions**20.1 Convening of Meeting**

The Trustee may at any time convene a meeting of Unitholders.

20.2 Meeting by Requisition

If the Trustee receives an application that a meeting of Unitholders be held, and the application is signed by Unitholders holding not fewer than 20% of the Units, then the Trustee must, within 10 Business Days after the application is received, convene a meeting of Unitholders.

20.3 Notice of Meeting

The Trustee will convene a meeting by sending a notice to each Unitholder:

- (a) not less than 90 days nor more than 120 days prior to such meeting; and
- (b) which specifies:
 - (i) the time, place and date of the meeting; and
 - (ii) the general nature of the business to be transacted at the meeting, including any resolutions proposed to be put to Unitholders at the meeting.

20.4 Time, Place and Conduct of Meeting

A meeting of Unitholders will be held at the time and place specified in the notice to be presided over by a nominee of the Trustee (unless the Unitholders, at the meeting, select another person to be the chairman by Ordinary Resolution) and will otherwise be conducted as set out in Schedule 2 or, in so far as this Deed makes no provision, as directed by the person presiding at the meeting.

21 Power of Attorney

- (a) For valuable consideration under the terms of this Deed, each Ordinary Unitholder irrevocably and unconditionally appoints the Manager and the Trustee and each director of the Manager or the Trustee from time to time (acting on behalf of the entity of which he or she is the director), jointly and severally, as agent and attorney of the Unitholder to execute all instruments, documents and certificates and do all things which are required or the Trustee or the Manager (as the case may be) reasonably considers to be necessary or desirable to give effect to:
 - (i) clause 7;
 - (ii) clause 8;
 - (iii) clause 25.6;
 - (iv) any notification to be made to amend the Register of Unitholders;
 - (v) any obligation of the Unitholder under this Deed;
 - (vi) the stamping or registration of the power of attorney, if applicable,
 subject to the below provisions of this clause 21.
- (b) Each Ordinary Unitholder indemnifies and holds harmless each of the Trust, the Manager, the Trustee and each director of the Manager or the Trustee against all liabilities that the Trust, Trustee or the Manager or any such director may incur in connection with the good faith exercise of the authority granted under paragraph (a) on behalf of the relevant Unitholder.
- (c) The power of attorney granted under paragraph (a) will terminate:
 - (i) in respect of the Manager or any director of the Manager, upon the retirement of the Manager in accordance with clause 14, but only with respect to such retired Manager and its directors; and

- (ii) in respect of the Trustee or any director of the Trustee, upon the retirement or removal of the Trustee in accordance with clause 15, but only with respect to such retired or removed Trustee and its directors.
- (d) If an Insolvency Event occurs in relation to the Manager or the Trustee, then for the time period ending on the date which is 90 days after the occurrence of the Insolvency Event, the power of attorney granted under paragraph (a) may only be exercised by the appointed attorneys in respect of an Ordinary Unitholder with the prior consent of that Ordinary Unitholder.

22 Intellectual Property

- (a) At any time and for any reason the Manager may require the name of the Trust to be changed to a name which does not include the terms 'PEP', 'Pacific Equity Partners' or 'Gateway', or otherwise imply an association with the Manager or its business or with any Related Body Corporate of the Manager or its business.
- (b) Notwithstanding any other clause to the contrary:
 - (i) the Firm Intellectual Property is the property of the Manager or a Manager Affiliate and is not the property of the Trust;
 - (ii) the Manager or a Manager Affiliate may use the Firm Intellectual Property or any portion of it for any transaction and in any manner without any fee, royalty or other compensation to the Trust;
 - (iii) the power of the Trustee to use the Firm Intellectual Property may be withdrawn by the Manager or a Manager Affiliate at any time without compensation to the Trust;
 - (iv) no person other than the Manager or a Manager Affiliate has any right, title or interest in the Firm Intellectual Property; and
 - (v) on termination of the Trust, all right, title and interest in the Firm Intellectual Property is held solely by the Manager or a Manager Affiliate.

23 Valuation

- (a) The Manager must value the Trust Property annually and at such other times as are provided in this Deed or determined by the Manager.
- (b) All securities and property shall be valued by the Manager in a manner consistent with the valuation of such securities and property by PEP Gateway, which will include (but will not be limited to) the application of the valuation guidelines of AIC, as modified as necessary on a case-by-case basis.

24 Contribution

24.1 Obligation to contribute

Each Ordinary Unitholder covenants for itself and its executors, administrators, estate, heirs, legal representatives, successors and assigns, that in the event the Trustee incurs (or the Trustee reasonably expects it could incur) any liability or loss of any kind on account of or in connection with any matter or transaction occurring or state of affairs existing during the time that Ordinary Unitholder held Units, that Ordinary Unitholder will, at any time upon at least 10 Business Days' prior notice, including any time after all of its Units have been redeemed, contribute to the Trust (or, if the Trust has wound up, pay to PEP Gateway Co-investment Investors Administration Pty Limited or its designee) its proportionate share of such liability or loss, provided, however, that the aggregate amount of such contributions from any Unitholder under this clause 24 in respect of a particular Commitment shall not exceed the lesser of:

- (a) 50% of that Commitment; and
- (b) the aggregate amount of distributions received from the Trust by such Ordinary Unitholder referable to that Commitment.

If the liability or loss that requires an Ordinary Unitholder to make contributions to the Trust pursuant to this clause 24 relates to a particular Investment opportunity, the Trustee will procure that such liability or loss is allocated among the Trust and PEP Gateway on a pro rata basis (based on the size of their respective investments in such investment opportunity). The Trustee will provide the Ordinary Unitholders prompt notice if the Trustee expects that the Ordinary Unitholders will be required to make contributions to the Trust pursuant to this clause 24. Each Ordinary Unitholder's share of liability or loss shall be based on the amount by which such liability or loss would have reduced the distributions received by the Ordinary Unitholders pursuant to this Deed had such liability or loss been incurred by the Trust prior to the time the distribution that is the subject of the contribution was made.

24.2 No Third Party Rights

The provisions of this Deed (including this clause 24) are intended solely to benefit the Unitholders and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit upon any creditor (other than an Indemnified Party) of the Trust (and no such creditor (other than an Indemnified Party) shall be a third party beneficiary of this Deed), and shall have any duty or obligation to any creditor (other than an Indemnified Party) of the Trust to make any contributions to the Trust or to cause the Trustee to request any Unitholder to make any contributions to the Trust. The obligations of the Unitholders under this clause 24 are payable only to the extent, and only in the amount, provided for in this Deed.

24.3 Provisions to Survive

The provisions of this clause 24 shall survive the dissolution, winding up and termination of the Trust.

25 Default

25.1 Non-receipt of notice

A notice sent to a Unitholder in accordance with this Deed is not invalidated because the Unitholder does not actually receive it.

25.2 Notice requiring payment of sums payable

- (a) If an amount required to be paid by a Unitholder pursuant to the terms of this Deed is not paid in full by the due date specified in the relevant notice (the **Original Notice**), the Trustee will (unless the relevant Unitholder has failed in two or more previous instances to pay any amount due under this Deed) give to the relevant Unitholder a copy of the Original Notice and a notice (**First Notice**) requiring payment of the amount specified in the Original Notice to be made within 10 Business Days of the First Notice and the Trustee will use reasonable endeavours to contact the Unitholder to confirm that address details for the service of notices are correct.
- (b) If such payment is not received within that further period or if a Unitholder has failed in two or more previous instances to pay any amount due under this Deed, then the Trustee may at any time give a notice (**Default Notice**) to the Unitholder requiring payment of the unpaid amount (as originally requested in the Original Notice) and an additional capital contribution to the Trust (which will not be treated as a payment towards the Issue Price of Units) of an amount equal to accrued interest on the unpaid amount calculated from the original due date to the time of actual payment. The Default Notice must:

- (i) appoint a day (which may be one or more Business Days after the date of the Default Notice) by which the payment required by the Default Notice is to be made; and
- (ii) state that, if the payment is not made by the day appointed, the Units (if any) to which the Original Notice relates or will relate may not be issued or, if issued, may be liable to be suspended or forfeited at the discretion of the Trustee.

25.3 Deductions for outstanding payments

If all or part of an amount requested in an Original Notice is not paid by the due date specified in that Original Notice, the Trustee will apply any amount payable to the relevant Unitholder under this Deed (whether under clause 10 or otherwise) to pay:

- (a) the unpaid amount; and
- (b) an additional capital contribution to the Trust (which additional amount will not be treated as a payment towards the Issue Price of the relevant Units) of an amount equal to Interest on the unpaid amount calculated as accruing from the date of the Default Notice, and all costs and expenses (including reasonable legal fees) incurred by the Trustee in relation to the unpaid amount.

25.4 Rights of Trustee on non-compliance with notice

- (a) If a Unitholder does not comply with the Default Notice referred to in clause 25.2 (**Defaulting Unitholder**):
 - (i) the Trustee may borrow the amount of the defaulted payment and specially allocate the related interest expense to the Defaulting Unitholder;
 - (ii) any or all of the Units of the Defaulting Unitholder may be suspended;
 - (iii) any or all of the Units of the Defaulting Unitholder may be forfeited, including after suspension of such Units; and
 - (iv) the Trustee must notify the other Unitholders of the failure to comply with the Default Notice referred to in clause 25.2.
- (b) Suspension or forfeiture of the Units may be effected by a notice from the Trustee to all the Unitholders, with effect from the date of the notice.
- (c) A Defaulting Unitholder will forfeit:
 - (i) all voting rights attaching to the suspended or forfeited Units; and
 - (ii) all distributions and other monies payable to the Defaulting Unitholder in respect of suspended or forfeited Units (as the case may be) which have not been paid to a Defaulting Unitholder before the suspension or forfeiture (as the case may be), except to the extent that such amounts have already been applied under clause 25.3.
- (d) The Trustee may, at its absolute discretion, lift a suspension from any or all Units of a Defaulting Unitholder, in which case the voting and distribution rights attaching to those Units in respect of which the suspension is lifted are restored.

25.5 Disposal of forfeited Units

The Trustee may:

- (a) cancel forfeited Units; or

- (b) sell (or otherwise dispose of) forfeited Units in the manner the Trustee determines on terms and conditions determined by the Trustee in its discretion,
- and the Trustee must update the Register accordingly.

25.6 Transfer of forfeited Units

- (a) On any sale of forfeited Units, the Trustee will receive the consideration for those Units and the Trustee will effect a transfer of those Units from the name of the Defaulting Unitholder to the person to whom the Units have been sold.
- (b) The Defaulting Unitholder hereby authorises the Trustee to take these steps and irrevocably appoints the Trustee as its attorney to do so (but only for that purpose). The Defaulting Unitholder indemnifies the Trustee against any claim or liability the Trustee may incur in connection with doing so.
- (c) Upon effecting the transfer, the transferee must be registered by the Trustee as the holder of the Units, and (to avoid doubt) those Units will not be forfeited as regards the transferee. The transferee's title to the Units will not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Units.

25.7 Liability despite forfeiture

A Defaulting Unitholder whose Units have been forfeited ceases to be a Unitholder in respect of the forfeited Units from the date the Trustee gives a notice under clause 25.4(b). Despite this:

- (a) the Defaulting Unitholder remains liable to pay to the Trustee all amounts due and payable by the Defaulting Unitholder under this Deed except to the extent that the proceeds of the disposal of the forfeited Units under clause 25.5 are applied towards those unpaid amounts under clause 25.10 which are referable to the forfeited Units. That liability ceases when the Trustee is paid all amounts due under clause 25.10 or otherwise in relation to the Units; and
- (b) unless the Trustee transfers all of the forfeited Units, the Defaulting Unitholder remains liable to pay the amount of all further drawdowns in respect of the Undrawn Commitments of the Defaulting Unitholder (as adjusted to reflect the transfer or cancellation of any forfeited Units) on the terms of this Deed as if the Defaulting Unitholder remained the holder of the forfeited Units.

25.8 Trustee's lien

To the extent permitted by law, the Trustee has a first and paramount lien upon every Unit for monies payable to the Trustee by the relevant Unitholder in connection with this Deed, as at the time when the Unitholder fails to make a payment in respect of that Unit by the relevant due date for payment. That lien extends to all distributions and other money from time to time payable in relation to that Unit.

25.9 Sale of Units to enforce lien

For the purpose of enforcing the Trustee's lien, the Trustee may sell the Units subject to the lien, in the same manner, so far as is applicable, as if the Units had been forfeited provided that the provisions in clauses 25.2 to 25.7 and clause 25.11 will apply, mutatis mutandis, in respect of the enforcement of the Trustee's lien.

25.10 Proceeds of sale

Net proceeds of any disposal of forfeited Units under clause 25.5(b) or the sale of Units to enforce a lien (including all distributions and other money from time to time payable to the Defaulting Unitholder in relation to those Units) must be applied:

- (a) first, in paying all costs incurred by the Manager, Trustee or Trust in relation to enforcing the lien or the forfeiture (as the case may be) and the sale;
- (b) second, in satisfying the amount unpaid and any unpaid additional capital contribution to the Trust by the Defaulting Unitholder as required under clause 25.2; and
- (c) third, in payment of any other amounts payable and unpaid by the Defaulting Unitholder under this Deed.

The balance (if any) must then be paid to the Defaulting Unitholder whose Units have been forfeited under this Deed. If the net proceeds of any sale are insufficient to pay the amounts in paragraphs (a), (b) and (c), then the Unitholder remains liable for the difference between the net proceeds of sale and the sum of those amounts.

25.11 No claims against the Trustee

Subject to an obligation of the Trustee to exercise its rights in respect of the forfeiture of Units in a manner which in the opinion of the Trustee is in the overall best interests of the non-defaulting Unitholders, neither a Defaulting Unitholder whose Units have been forfeited nor any other person (including a Unitholder whose Units have not been forfeited) may question or have any claim against the Trustee in relation to either the price at which or the terms upon which the forfeited Units may be or are sold by the Trustee and the Unitholders (including the Defaulting Unitholder) release the Trustee in respect of any liability the Trustee may have in relation to the forfeited Units.

25.12 Other rights not affected

The rights, powers and remedies conferred on the Trustee and Manager by this clause 25 are in addition to other rights, powers or remedies given by law independently of this Deed in respect of a breach of this Deed.

26 Miscellaneous

26.1 Allocations Between Investments

The Trustee shall reasonably and in good faith determine to which Investment (and Series) a particular distribution relates.

26.2 Form of Payments; Setoff

Subject to clause 27.8, all payments required to be made to the Trust, the Trustee or the Manager pursuant to this Deed shall be made in immediately available funds denominated in Australian dollars by certified bank check or by wire transfer to such account as may be designated from time to time by the Trustee. In the sole discretion of the Trustee, the Trustee may apply all or any portion of any payment otherwise to be paid by the Trust under this Deed to any Unitholder to amounts owed by such Unitholder to the Trust pursuant to this Deed.

27 Confidentiality

Unless approved by the Trustee in writing, or otherwise required by law, each Ordinary Unitholder must and must cause each of its Affiliates and agents to maintain the confidentiality of information furnished to it or them by the Trust, the Manager or the Trustee other than information:

- (a) generally known to the public or wholesale funds management industry (other than as a result of dissemination by that Ordinary Unitholder or its Affiliates and agents in breach of this clause 27);

- (b) obtained by that Ordinary Unitholder from a third party who insofar as known to such Ordinary Unitholder is not prohibited from transmitting that information to that Ordinary Unitholder by a contractual, legal or fiduciary obligation to the Trust; or
- (c) already in the possession of that Ordinary Unitholder or its Affiliates or agents prior to receipt of such information from the Trustee,

provided however that an Ordinary Unitholder may disclose information about the Trust or its Investments:

- (d) to such of its Affiliates or agents as they need to know to oversee, manage and operate the investment in the Trust but only if such persons have been requested to maintain the confidentiality of such information;
- (e) in the case of a Trustee Unitholder, to investors in the trust or other collective investment vehicle for which it holds Units as Trustee Unitholder and in marketing materials given to prospective investors but only if all such investors or potential investors are instructed to keep the information confidential; or
- (f) if permitted under clause 27.2.

27.2 Exceptions

An Ordinary Unitholder may make any disclosures in relation to this Deed or information provided to it under this Deed as, in its reasonable discretion, it thinks necessary:

- (a) to its professional advisers, bankers, financial advisers, financiers and insurers to whom it is reasonably necessary to disclose such information (and only to the extent reasonably necessary), if those persons are instructed to keep the information disclosed confidential;
- (b) to comply with any applicable law or requirement of any regulatory authority or Government Agency, any rules of a recognised stock exchange, or legal process provided that the Ordinary Unitholder must endeavour to consult with the Trustee or the Manager prior to the disclosure about the form and content of the required disclosure;
- (c) to any of its employees or its related entities' or officers to whom it is reasonably necessary to disclose such information (and only to the extent reasonably necessary) if that employee or officer is instructed to keep the information confidential; or
- (d) without limiting clause 27(c), for the purposes of reporting to relevant investing entities, nominees or custodians as required under their respective constituent documents (if any).

For the avoidance of doubt, nothing in this clause 27 prevents the Trustee or the Manager from disclosing to any person information about the Trust, its Investments and the performance of the Trust.

27.3 Counterparts

This Deed may be executed in any number of counterparts. All executed counterparts constitute one document.

27.4 Notices

- (a) Any notice, demand or other communication given to a Unitholder, the Trustee or the Manager under this Deed shall be deemed to be given if given in writing (including facsimile or electronic mail transmission) addressed, or sent by facsimile or electronic mail transmission, as provided below (or to the addressee at such other address, electronic mail address or facsimile number as the addressee shall have specified by notice actually received by the addressor), and if:

- (i) actually delivered in fully legible form to such address (evidenced, in the case of delivery by same day or overnight courier, by confirmation of delivery from the courier service making such delivery); or
 - (ii) in the case of a letter, five days shall have elapsed after the same shall have been deposited in the Australian mail, with first-class postage prepaid, and any notice, demand or other communication sent by facsimile or electronic mail transmission shall be deemed to have been given on the Business Day following the day such transmission shall have been sent.
- (b) For the purposes of paragraph (a) above, notices, demands or other communications shall be given as follows:
- (i) If to the Manager or the Trustee (as the case may be), at the relevant address specified in the 'Parties' section of this Deed or as otherwise notified by the Trustee.
 - (ii) If to any Unitholder, to it at its address specified in its Application Form or as otherwise notified by the Unitholder.

27.5 Successors

This Deed shall be binding on the executors, administrators, estates, heirs, legal representatives, successors and assigns of the Unitholders.

27.6 Entire Agreement and Potentially Excused Unitholders

- (a) This Deed, together with any Application Forms and any Other Agreements, constitutes the entire agreement among the parties thereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto. Notwithstanding the provisions of this Deed, including, without limitation, clause 16, it is hereby acknowledged and agreed that the Trustee on its own behalf or on behalf of the Trust without the approval of any Unitholder or any other Person may enter into a side letter or similar agreement (an **Other Agreement**) to or with a Unitholder which has the effect of establishing rights under, or altering or supplementing the terms hereof (including in respect of a specific Investment).
- (b) The Trustee may agree with an Ordinary Unitholder in respect of a particular Commitment, whether in such Ordinary Unitholder's relevant Application Form or in an Other Agreement entered into with that Ordinary Unitholder, that such Ordinary Unitholder has the right to be excused from certain Investments (or a class thereof) which would otherwise be referable to a Series held by that Ordinary Unitholder or in which that Ordinary Unitholder would otherwise be required to participate under the terms of this Deed (each such Ordinary Unitholder a **Potentially Excused Unitholder** and each such right, an **Excuse Right**). If a Potentially Excused Unitholder exercises an Excuse Right in respect of a proposed Investment in accordance with the terms agreed with the Trustee in the relevant Application Form or Other Agreement (as the case may be), then:
- (i) notwithstanding anything to the contrary in this Deed:
 - (A) the Trustee will not be entitled to issue a Drawdown Notice to (or request a capital contribution, pursuant to clause 6.5, from) the Potentially Excused Unitholder; and
 - (B) that Potentially Excused Unitholder will not be issued Ordinary Units or additional Ordinary Units (as the case may be) in the relevant Series,
- in each case in respect of the relevant Investment, including to fund the acquisition of that Investment (or any follow-on investment in relation thereto) or to pay actual or anticipated fees, Expenses, Trust Liabilities or losses of the Trust which are

referable or allocable to the relevant Series (in accordance with the terms of this Deed); and

- (ii) the Trustee shall be entitled to construe each other provision of this Deed (acting reasonably and in good faith) so as to give effect to this clause 27.6(b) and any exercise of an Excuse Right.

27.7 Governing Law

This Deed shall be governed by and construed in accordance with the laws of New South Wales without giving effect to any conflict or choice of law provisions that would make applicable the substantive law of any other jurisdiction. The Trustee and the Unitholders submit to the exclusive jurisdiction of the courts of New South Wales.

27.8 Currency

The functional currency of the Trust shall be Australian dollars. All currency references herein shall be to Australian dollars unless otherwise stated. All cash capital contributions shall be made in Australian dollars.

27.9 GST

If the Trustee or the Manager (**Supplier**) (or the representative member of any GST group of which the Supplier is a member) is liable for GST on any supply (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) made under or in connection with this Deed (including the supply of any goods, services, rights, benefits or things), the Supplier is entitled to receive, unless otherwise provided, an additional amount on account of GST, equal to the GST payable on the supply, and the Supplier is entitled to be reimbursed or indemnified for the amount out of the Trust Property.

27.10 Severability of Provisions

Each provision in this Deed shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Deed which are valid, enforceable and legal.

27.11 Electronic execution

A party may sign this Deed electronically, and bind itself accordingly. In addition, if a party signs this Deed electronically, the intention is to print out this Deed after all parties that are signing electronically have done so, so that the first such print-out will also be an executed original counterpart of this Deed. Each signatory confirms that their signature appearing in this Deed, including any such print-out, is their personal signature authenticating it.

Schedule 1

Definitions and Interpretation

1 Definitions

1.1 Defined Terms

The following terms shall have the meanings specified:

2023 Series means Ordinary Units issued in the 2022 or 2023 Financial Years and Ordinary Units issued in respect of Commitments accepted by the Trustee prior to 28 November 2023.

Administrative Fee has the meaning given in clause 11.3(c).

Affiliate means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and, with respect to Persons that are individuals, also means the parents, grandparents, children, grandchildren and spouse of such individual, and trusts established for the benefit of any of the foregoing provided, however, that an Investment (or entity thereof) shall not be treated as an 'Affiliate' of the Trust or the Trustee for purposes of this Deed.

AIC means Australian Investment Council Limited (ACN 056 885 708).

AMIT means, for an income year, a trust which is an attribution managed investment trust for the purposes of section 276-10 of the Tax Act.

AMIT Legislation means all or any of the:

- (a) Tax Act;
- (b) *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth);
- (c) *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* (Cth);
- (d) *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* (Cth); and
- (e) *Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016* (Cth),

as appropriate and as the context requires.

AMIT Regime means the regime for the taxation of AMITs, as set out in the AMIT Legislation.

Application Form means each Ordinary Unitholder's application, commitment letter or equivalent document (as determined by the Trustee) for Ordinary Units in respect of a Commitment.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning attributed to it in section 11 of the Corporations Act.

Auditor means the last person appointed under clause 19.1.

Bank Bill Rate on any day means:

- (a) the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) for 90 days displayed on the BBSY page of the Thomson Reuters Screen at 12.00pm (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters; or
- (b) if no such rate is available, the rate that the Manager states is the nearest practical equivalent.

Business Day means any day on which commercial banks in Sydney, Australia are open and conducting regular business.

Carry means the amount calculated in accordance with clause 10.11.

Cash includes cheques and electronic transfer of funds for immediate value.

Class means a class of Units, being Units which have the same rights and obligations.

Commitment means, in respect of an Ordinary Unitholder or an applicant for Ordinary Units, the total amount of capital committed by the relevant person in an Application Form and which is accepted by the Trustee under clause 4.3, as adjusted under clause 17.4. For the avoidance of doubt, each Application Form accepted by the Trustee (in whole or in part) will represent a separate Commitment such that, for example, an Ordinary Unitholder which has five Application Forms accepted by the Trustee (in whole or in part) will be deemed to have made five separate Commitments.

Contract means any deed, agreement or arrangement whether in writing or not.

Controller means a controller as defined in section 9 of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Defaulting Unitholder has the meaning given in clause 25.4(a).

Disposition Proceeds means:

- (a) proceeds received from the sale or transfer of all or any portion of an Investment (including any capital component) as determined in good faith by the Trustee; and
- (b) any dividends and other receipts received in respect of an Investment.

Distributable Amount means the amount calculated in accordance with clause 10.10.

Distributable Cash has the meaning given in clause 10.13(a).

Distribution Entitlement means the amount calculated in accordance with clause 10.9.

Drawdown Date means the date for payment specified by the Trustee in a Drawdown Notice.

Drawdown Notice means a notice issued by the Trustee to an Ordinary Unitholder requesting (other than in the case of a Pre-Paid Commitment Drawdown Notice) payment against the Undrawn Commitment of that Unitholder and identifying the purpose for which the payment will be applied.

Expenses means all expenses of the Trust in accordance with the terms of this Deed, and includes Organisational and Operating Expenses.

Expenses Reserve Amount has the meaning given in clause 6.4(a)(ii).

Financial Year means the calendar year.

Firm Intellectual Property means the name 'Pacific Equity Partners' or 'PEP' and any trade mark associated with or used in connection with either of those names and any other intellectual property rights associated with such names or trademarks.

First Series means, in respect of a particular Commitment, the Series in which an Ordinary Unitholder is first issued Ordinary Units.

First Series End Date has the meaning given in clause 6.3(a).

Following Series means, in respect of a particular Commitment, the Series (if any) issued other than the First Series.

Following Series End Date means the last day of the Financial Year which commences on the day immediately following the First Series End Date for such Commitment.

Follow-on Funding Reserved Amount has the meaning given in clause 6.4(a)(i).

Government Agency means a government or governmental, semi-governmental, administrative or fiscal body, court or other judicial body, department, commission, authority, agency or entity anywhere in the world.

Gross Negligence means gross negligence, as such term is construed in accordance with the laws of the State of Delaware.

GST means any goods and services tax, consumption tax, value-added tax or any similar, impost or duty which is or may be levied or becomes payable in connection with the supply of goods or services.

Income of the Trust has the meaning given in clause 10.2(a).

Income Year means the 12 month period beginning on 1 July and ending on 30 June in each year, unless the Trustee has successfully applied for a substituted accounting period to use the calendar year in which case Income Year means calendar year.

Indemnified Party has the meaning given in clause 9.10(a).

Insolvency Event means in respect of a person:

- (a) a winding up or other dissolution of the person commences, or an order is made by a court of competent jurisdiction to commence such a winding up or other dissolution;
- (b) a liquidator or provisional liquidator, receiver, receiver and manager or administrator is appointed in respect of the person or an order is made by a court of competent jurisdiction to make such an appointment;
- (c) the person enters into or resolves to enter into a scheme of arrangement or a deed of company arrangement or a composition with or an assignment for the benefit of all or any class of its creditors;
- (d) a Controller or trustee in bankruptcy is appointed over any assets or undertaking of the person; or
- (e) the person is insolvent or presumed to be insolvent under the Corporations Act.

Investment means any:

- (a) investment alongside PEP Gateway which the Manager or the Trustee (in its sole discretion) decides that the Trust will participate; and
- (b) Short Term Investment.

Issue Price in relation to a Unit means the price at which that Unit is issued, calculated in accordance with clause 5.

Management Fee means, in respect of each Series, an amount equal to 1.0% of the Net Asset Value referable to that Series.

Manager Affiliate means any one of:

- (a) the Manager and Trustee and their respective Related Bodies Corporate, officers, employees and members;
- (b) a person (whether alone or together with another person or persons) that directly or indirectly controls, through one or more intermediaries, the Manager or the Trustee;

- (c) a person that is directly or indirectly controlled, through one or more intermediaries, by the Manager or the Trustee, other than in circumstances where such control is exercised through an arms-length investment management arrangement or power of attorney;
- (d) where the Manager or the Trustee is an individual, the parents, grandparents, children, grandchildren and spouse of the Manager or the Trustee (as the case may be); and
- (e) any trust established for the benefit of any person referred to in paragraphs (b) to (d).

Net Asset Value means:

- (a) in respect of the Trust at any given time, the Trust Value less the Trust Liabilities; and
- (b) in respect of a Series or Class at any given time, the Trust Value less the Trust Liabilities (in each case as adjusted by the Trustee to reflect the allocation of Trust Value and Trust Liabilities to the relevant Class or Series).

Net Income has the meaning given in section 95 of the *Income Tax Assessment Act 1936* (Cth).

New Manager Sponsor Unitholders means, in the context of a new Manager appointed to replace a Manager who is retiring under clause 14, the Sponsor Unitholders who are issued Sponsor B Units pursuant to clause 14.3(d).

Non-Traded Securities means any financial product other than Traded Securities.

Ordinary Resolution means:

- (a) a resolution passed at a meeting by a majority of the votes cast by Unitholders who are present at the meeting or who have otherwise validly appointed a proxy to vote on their behalf and who are entitled to vote on the resolution; or
- (b) a resolution passed in writing by Unitholders who are entitled to vote and who, between them, hold the majority of votes that are able to be cast.

Ordinary Unit means a Unit with the rights set out in clause 3.3.

Ordinary Unitholder means the person for the time being registered on the Register as the holder of an Ordinary Unit, and, where the context dictates, an Ordinary Unitholder shall include a person who has made a Commitment (and had that Commitment accepted by the Trustee, in whole or in part) but has not yet been issued Ordinary Units.

Organisational and Operating Expenses has the meaning given in clause 11.1.

Other Agreement has the meaning given in clause 27.6(a).

Outgoing Manager Sponsor Unitholders means, in the context of a new Manager appointed to replace a Manager who is retiring under clause 14, the Sponsor Unitholders who are entitled to Sponsor Distributions as calculated pursuant to clause 14.4.

Paid Up Capital means, at any given time in respect of a particular Series held by an Ordinary Unitholder, the aggregate of all drawdowns paid by that Ordinary Unitholder to the Trustee in respect of that Series in accordance with the terms of this Deed.

PEP means Pacific Equity Partners Pty Limited.

PEP Gateway means the trust known as PEP Gateway, constituted by the PEP Gateway Trust Deed.

PEP Gateway Trust Deed means the trust deed dated 15 December 2021 (as amended from time to time).

Person means any individual or any business, corporation, partnership, joint venture, limited liability company, unincorporated association, trust or other enterprise.

Pre-Paid Commitment Drawdown Notice has the meaning given in clause 6.1(g).

Pre-Paying Unitholder has the meaning given in clause 6.1(g).

Proceeds means cash or property received by the Trust with respect to any Investment, whether in connection with a sale of an Investment or otherwise.

Quarter means a period of three months ending on 31 March, 30 June, 30 September and 31 December in each year (or that part of such a period occurring at the commencement or winding up of the Trust) and **Quarterly** has a corresponding meaning.

Redemption Price means the amount calculated for the relevant Class of Units in accordance with clause 7.4.

Register has the meaning given in clause 6.7(a).

Related Body Corporate has the meaning given in the Corporations Act.

Reserve Amount means the sum of the Follow-on Funding Reserve Amount and the Expenses Reserve Amount.

Security Interest means any mortgage, hypothecation, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Series means, in each case, a group of Ordinary Units:

- (a) designated by the Trustee in accordance with clause 4.5(b); and
- (b) entered in the Register,

as belonging to a single group.

Series Proportion in relation to an Ordinary Unitholder in respect of a Series, means a percentage, the numerator of which is the total number of Ordinary Units held by the Ordinary Unitholder in that Series and denominator of which is the total number of Ordinary Units on issue in that Series.

Short Term Investment means:

- (a) an investment which is guaranteed by a Government Agency;
- (b) securities (as defined in section 761A of the Corporations Act), loans, deposits, bills of exchange, promissory notes, certificates of deposit or other negotiable instruments of an authorised deposit taking institution within the meaning of the *Banking Act 1959* (Cth) or any other entity (with aggregate capital, surplus and undivided profits of at least \$250,000,000) conducting the business of banking anywhere in the world;
- (c) an Investment in a Cash management trust which is rated not less than AAA;
- (d) an Investment in an entity which is rated not less than prime-one or A-1 or their equivalents by Moody's Investor Service Inc or Standard & Poor's Ratings Group or their respective successors;
- (e) an Investment in any repurchase agreement secured by any one or more of the foregoing;
- (f) liquid securities intended to provide for the preservation of principal; or
- (g) an Investment in a fund that invests primarily in one or more of the Investments referred to in paragraph (a), (b), (c), (d), (e) or (f).

Special Resolution means:

- (a) a resolution passed at a meeting by at least 75% of the votes cast by Unitholders who are present at the meeting or who have otherwise validly appointed a proxy to vote on their behalf and who are entitled to vote on the resolution; or

- (b) a resolution passed in writing by Unitholders who are entitled to vote and who, between them, hold at least 75% of the votes that are able to be cast.

Sponsor means the Trustee or the Manager or any person nominated by the Manager.

Sponsor B Unit means a Sponsor Unit issued to a New Manager Sponsor Unitholder.

Sponsor Distribution means a distribution to which Sponsor Unitholders are entitled under this Deed.

Sponsor Unit means a Unit with the rights set out in clause 3.4.

Sponsor Unitholder means the person for the time being registered in the Register as a holder of a Sponsor Unit.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth), as applicable, and where appropriate, includes the *Taxation Administration Act 1953* (Cth), applicable imposition and/or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

Taxes means all income tax, GST, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, municipal rates, stamp duty and other taxes, charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority, including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, rates, duties, charges or levies.

Terms of Issue, in relation to a Unit, means the terms and conditions on which that Unit is issued.

Traded Securities means financial products that are quoted on a financial market.

Trust has the meaning given in the recitals.

Trust Commencement Date means the date on which the Trust commences in accordance with clause 1.3(c).

Trust Liabilities at any time, means the aggregate of the following at that time:

- (a) each liability in respect of the Trust or, where appropriate, a provision in accordance with Australian generally accepted accounting standards in respect of such liability;
- (b) each other amount (including any indemnity) payable out of the Trust Property or, where appropriate, a provision in accordance with Australian generally accepted accounting standards in respect of such liability; and
- (c) other appropriate provisions in accordance with Australian generally accepted accounting standards,

as calculated by the Manager but excluding any amounts included as liabilities for accounting purposes reflecting funds available to pay Unitholders. Where more than one Class or Series is on issue and the Net Asset Value of the Trust Property referable to a particular Class or Series (as the case may be) is being calculated, reference to "liabilities" means that proportion of the liabilities in respect of the Trust that the Trustee considers are properly referable to each Class or Series (as the case may be).

Trust Property means all property (including income) of the Trust.

Trust Proportion in relation to an Ordinary Unitholder, means a percentage, the numerator of which is the total number of Ordinary Units held by the Unitholder and denominator of which is the total number of Ordinary Units on issue.

Trustee Unitholder means a Unitholder which holds Units as trustee, responsible entity, custodian, sub-custodian or nominee of a trust or other collective investment vehicle.

Trust Value at any time means the aggregate value of the following at that time:

- (a) all Investments of the Trust at the relevant time as determined by the Manager in accordance with this Deed;
- (b) the amount of money comprised in the Trust Property (to the extent not included in paragraph (a)); and
- (c) any other Trust Property,

as calculated by the Manager in accordance with this Deed.

Undrawn Commitment means, in respect of a Commitment of an Ordinary Unitholder, the amount equal to that Commitment less the aggregate of all drawdowns paid by that Ordinary Unitholder in respect of that Commitment in accordance with the terms of this Deed, as adjusted in accordance with the terms of this Deed (including under clause 17.4 and/or clause 25.7).

Unit means an interest in the Trust Property and includes an Ordinary Unit, a Sponsor Unit and any other Class of Units issued by the Trustee pursuant to clause 3.2.

Unitholder means the person for the time being registered in the Register as the holder of a Unit, and, where the context dictates, a Unitholder shall include a person that has made a Commitment (and had that Commitment accepted by the Trustee, in whole or in part) but has not yet been issued Units.

Unitholding means the Units held by an Ordinary Unitholder or a Sponsor Unitholder (as the context requires).

2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) headings are for convenience only and do not affect interpretation;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
- (f) a reference to any party to this Deed or any other agreement or document includes the party's successors and permitted assigns;
- (g) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to any legislation or to any provision of any legislation includes any modification, re-writing or re-enactment of it, any legislative provisions substituted for it, and all regulations and statutory instruments issued under it;
- (i) a reference to currency, an amount of money, **dollars** or **\$** is to Australian currency;
- (j) a word or phrase appearing in a certain context which is defined in the Corporations Act, has that defined meaning in this Deed;
- (k) a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
- (l) the listing rules of a stock exchange will be regarded as a law;
- (m) a reference to a clause or schedule is to a clause of, or schedule to, this Deed;

- (n) a reference to writing includes a facsimile and email transmission and any means of reproducing words in a tangible and permanently visible form; and
- (o) mentioning anything after **include**, **includes** or **including** does not limit what else might be included.

Schedule 2

Meetings (clause 20)

1 Effect of Non-Receipt of Notice

Non-receipt of the notice convening a meeting or of a written resolution by, or accidental omission to give the notice to, any person entitled to receive the notice will not invalidate the proceedings at or any resolution passed at a meeting or the written resolution.

2 Quorum

- (a) No business will be transacted at any meeting unless a quorum of Unitholders is present at the time when the meeting proceeds to business. The quorum for a meeting of Unitholders will be two Unitholders holding not less than 30% of the Units, unless there is only one Unitholder, in which case the quorum will be one.
- (b) For the purpose of determining whether a quorum is present, a person attending as a proxy for a Unitholder will be taken to be a Unitholder.

3 If Quorum Not Present

If a quorum is not present within half an hour from the time appointed for the meeting:

- (a) where the meeting was convened upon the requisition of Unitholders, the meeting will be dissolved; or
- (b) in any other case:
 - (i) the meeting stands adjourned to a day, and at a time and place, as the Trustee determines or, if no determination is made by the Trustee, to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will be dissolved.

4 Adjournments

- (a) The chairman may with the consent of any meeting at which a quorum is present, and must if directed by the meeting, adjourn the meeting from time to time and from place to place. No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting will be given as for the original meeting.
- (c) Except as provided by paragraph (b), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

5 Voting

- (a) Every question arising at a meeting of Unitholders will be decided in the first instance by a show of hands of Unitholders, except that a poll must be taken in any case where:
 - (i) it is required by this Deed that the question be decided by a majority which is to be measured by a percentage of the votes of those present; or
 - (ii) it is demanded, either before or immediately after any question is put to a show of hands, by Unitholders present personally or by proxy, holding between them at least 10% of the Units or by the Trustee.

- (b) Unless a poll is demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Unitholders, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (c) The demand for a poll may be withdrawn before it is taken.

6 Procedure for Polls

- (a) Subject to paragraph (b), if a poll is properly demanded, it will be taken in the manner, either at once or after an interval or adjournment or otherwise, as the chairman directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment will be taken immediately.

7 Joint Unitholders

Where there are joint Unitholders only one may vote in respect of their Units and, if there is more than one present, that person will be the person whose name stands first on the Register.

8 Objections to Qualification to Vote

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any objection must be referred to the chairman of the meeting, whose decision is final.
- (c) A vote not disallowed as a result of an objection is valid for all purposes.

9 Number of Proxies

A Unitholder will be entitled to attend and vote at any meeting of Unitholders, and will be entitled to appoint another person (whether a Unitholder or not) as the Unitholder's proxy to attend and vote. A proxy will have the same rights as the Unitholder to vote whether on a poll or show of hands, to speak and to be counted in a quorum.

10 Form of Proxy

- (a) An instrument appointing a proxy will be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy does so, the proxy is not entitled to vote on the resolution except as specified in the instrument but may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (c) An instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (d) An instrument appointing a proxy will be in the form reasonably determined by the Trustee.

11 Lodgement of Proxy

An instrument appointing a proxy will not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited:

- (a) not less than 24 hours (or a lesser period that the Trustee may permit) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; and
- (b) in the case of a poll, not less than 24 hours (or a lesser period that the Trustee may permit) before the time appointed for the taking of the poll,

at the office maintaining the Register or at another place within Australia as is specified for that purpose in the notice convening the meeting. For the purposes of this paragraph, any document a facsimile of which is received upon a telephonic facsimile machine installed at a place will be taken to be received at that place at the time when the facsimile is received upon the machine.

12 Validity of Proxy

A vote given under an instrument of proxy is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed), or the transfer of the Unit in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Trustee at the office maintaining the Register before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

13 Where Proxy is Incomplete

No instrument appointing a proxy will be treated as invalid merely because it does not contain the address of the appointor or of a proxy or is not dated or does not contain in relation to any or all resolutions an indication of the manner in which the proxy is to vote and, in any case where the instrument does not contain the name of a proxy, the instrument will not for that reason be invalid and will be taken to be given in favour of the chairman of the meeting.

14 Right of Director to Attend General Meeting

A director of the Trustee who is not a Unitholder will, by virtue of that person's office as director, be entitled to be present and to speak at any meeting.

15 Written Resolutions

- (a) If a matter under this Deed requires the consent of all or a particular majority of the Unitholders, that consent may be obtained in respect of the Unitholders by written resolution signed by or on behalf of the requisite majority of the Unitholders and that resolution may consist of one or more instruments in like form each signed by one or more Unitholders.
- (b) A resolution in writing may consist of several documents in the same form. A document produced by mechanical or electronic means is considered to be a document in writing.
- (c) Any resolution proposed to be effected in writing must be sent to all Unitholders entitled to vote in respect of the resolution.
- (d) Any breach of paragraph (c) will not invalidate the written resolution.

16 Technology

A meeting of Unitholders may be held by telephone or by using any other technology, as long as each person present may hear, and be heard by, each other person present.

Schedule 3

AMIT provisions

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in this Deed, and:

- (a) **AMIT Income Year** means a year of income for the purposes of the Tax Act that the Trust is an AMIT.
- (b) **AMMA Statement** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (c) **Assessable Income** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (d) **Constituent Documents** mean the 'constituent documents' referred to in section 276-210(3) of the Tax Act.
- (e) **Determined Member Component** has the meaning given to that phrase in section 276-205 of the Tax Act.
- (f) **Determined Trust Component** has the meaning given to that phrase in section 276-255 of the Tax Act.
- (g) **Discovery Year** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (h) **Exempt Income** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (i) **Member** means a Unitholder.
- (j) **Member Component** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (k) **Member Objection Choice** means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.
- (l) **Non-assessable, Non-exempt Income** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (m) **Over** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (n) **Tax Off-set** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (o) **Trust Component** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (p) **Trust Component Deficit** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (q) **Under** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.

2 Trustee's Powers

2.1 AMIT election

- (a) The Trustee may make the choice for the Trust to be an AMIT for the purpose of section 276-10 of the Tax Act.
- (b) The Trustee may make a choice that each Class will be treated as a separate AMIT for the purposes of section 276-20 of the 1997 Tax Act.

2.2 General provisions

The Trustee has, without limiting its other rights and powers provided for under this Deed and this Schedule 3, all of the powers and rights which are necessary or desirable to enable:

- (a) the Trust to be eligible to apply the AMIT Regime;
- (b) the Trustee to comply with the requirements of the AMIT Regime;
- (c) the Trust to be properly administered and operated under the AMIT Regime;
- (d) the Trustee to maintain equity among Members in the operation of the AMIT Regime; and
- (e) the Trustee to exercise any discretions in the Tax Act relating to the administration and operation of AMITs, including the allocation of Unders, Overs and Trust Component Deficits.

2.3 Specific powers

For each Income Year during which the Trust is an AMIT, the Trustee must:

- (a) determine the total amounts of particular characters of Assessable Income, Exempt Income, Non-assessable, Non-exempt Income and Tax Off-sets for the Trust and any Class;
- (b) determine the taxable income of the Trust for each Income Year, including a determination of the taxable income of a particular category, source or character for tax purposes. This includes determining all of the Trust's Determined Trust Components and Trust Components under the AMIT Regime for any AMIT Income Year;
- (c) apply any Unders, Overs and Trust Component Deficits to the amounts in clause 2.3(a) of this Schedule 3 in accordance with subdivision 276-F of the 1997 Tax Act and subject to the discretions in that subdivision;
- (d) subject to the Terms of Issue of any particular Unit or Class, allocate the amounts so determined after the application of clause 2.3(b) of this Schedule 3:
 - (i) first, to Unitholders where their Units have been redeemed during the Income Year, in the proportion that is equal to the amount of the Income of the Trust or Class, as relevant, to which the Unitholder was entitled in relation to their redeemed Units for the Income Year divided by the total Income of the Trust or Class available for distribution for the Income Year;
 - (ii) in relation to the remainder amounts after the allocations in paragraph 2.3(d)(i) of this Schedule 3, to each Unitholder who is on the Register on the last day of the Income Year in the proportion that is equal to the sum of:
 - (A) the amounts of Income distributed to the Unitholder from the Trust or Class during the Income Year; and
 - (B) any other entitlements of the Unitholder to a portion of the Income of the Trust or Class for the Income Year,
 divided by the total Income of the Trust or Class for the Income Year after it has been reduced by any amounts allocated under paragraph (i) above; and
- (e) ensure that clause 3.1 of this Schedule 3 is complied with; and
- (f) comply with the documentation requirements under subdivision 276-H of the 1997 Tax Act, including the preparation of AMMA Statements within the prescribed time frames.

2.4 Units and Classes of Units

- (a) Subject to paragraph 2.4(b) of this Schedule 3, the Trustee may under the AMIT Regime issue Units of a single Class or single Series or different Classes or different Series. Each

different Class of Units or Series must have distinct rights, obligations and restrictions from the rights, obligations and restrictions of all other Classes or Series of Units issued, but the rights to income and capital of a particular Class or Series must be the same for every membership interest in that Class or Series. All Units in a Class or Series rank equally. Unless the Trustee has made a choice under section 276-20 that each Class or Series will be treated as a separate AMIT, a separate Class does not constitute a separate trust.

- (b) Paragraph 2.4(a) of this Schedule 3 does not permit the Trustee to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Corporations Act requires those matters to be set out in this Deed.

2.5 Members' acknowledgement regarding choice for Unders/Overs

Each Member acknowledges or is taken to acknowledge:

- (a) that the Trustee has, under the AMIT Regime in respect of an AMIT Income Year a choice with respect to how the Trustee is to address any amounts which may give rise to Unders or Overs of a particular character for the Trust, including whether such amounts should be addressed by the Trustee by:
 - (i) issuing amended AMMA Statements to Members under section 276-455(4) of the Tax Act (as may be amended from time to time), for the year of income for the Trust to which the Under or Over relates; or
 - (ii) treating the amount as an Under or Over of a particular character for the Trust, and adjusting the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount under section 276-305 of the Tax Act, (as may be amended from time to time); and
- (b) choices made by the Trustee pursuant to paragraph 2.2(a) of this Schedule 3 may result in:
 - (i) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in the Discovery Year; or
 - (ii) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in an earlier income year,

than if the Trustee did not make that choice or made the choice in a different way.

2.6 Trustee's limitation of liability for AMIT Regime powers

Without limiting clause 9.10 and to the maximum extent permitted by law, the Trustee does not incur any liability and it is not obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under this paragraph 2 of this Schedule 3, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

3 Attribution of Taxable Income to Member

3.1 Trustee must make 'fair and reasonable' allocation

- (a) Following the end of an Income Year which is an AMIT Income Year, the Trustee must attribute the taxable income of the Trust for the Income Year to Members under the AMIT Regime, including the attribution of taxable income of each particular category or source (or both) for tax purposes to Members.

- (b) The Trustee must perform the attribution under paragraph (a), including the attribution of taxable income of each particular category or source (or both), in accordance with the following principles:
 - (i) the amount of each Member's Member Components and Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Member;
 - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this Deed and any other documents that constitute Constituent Documents for the Trust; and
 - (iii) the Trustee must not attribute any part of a Determined Trust Component of the Trust to a Member's Units because of the tax characteristics of the Member.

3.2 Attribution must be in accordance with existing distribution provisions

Without limiting paragraph 3.1(b) of this Schedule 3, the Trustee must attribute in respect of an AMIT Income Year to each Member so much of any Determined Trust Components of the Trust for the Income Year as the Trustee reasonably determines are reflected in the Member's present entitlement to the Income of the Trust for the Income Year.

4 Member's Objections

4.1 Member must notify, provide information and indemnify Trustee in relation to objections

If a Member objects to the basis of the attribution of the taxable income of the Trust for the purposes of the AMIT Regime, including by making a Member Objection Choice, the Member agrees to:

- (a) provide the Trustee with written notice of the Member's intention to make an objection at least five Business Days prior to notifying the Commissioner of Taxation of its objection;
- (b) include, in the notice provided to the Trustee, a summary of the reasons why the Member considers the attribution to be inappropriate;
- (c) provide to the Trustee any information the Trustee reasonably requests in order to assess the Member's objection or proposed objection; and
- (d) indemnify the Trustee against all costs and liabilities incurred by the Trustee as a result of the objection or proposed objection.

4.2 Members acknowledge consequences if objection made

Each Member is taken to agree that if any Member makes an objection to the basis of attributing the taxable income of the Trust under the AMIT Regime, including by making a Member Objection Choice:

- (a) it may be necessary or desirable for the Trustee to amend its attribution of the relevant taxable income to the Members and issue amended AMMA Statements to Members;
- (b) the Trustee may issue or reissue any AMMA Statement to a Member;
- (c) the Determined Member Components of the Member and any other Members in the Trust may, under the AMIT Regime, be equal to the Member Components of the Member and any other Members in the Trust; and
- (d) the Determined Trust Components of the Trust may, under the AMIT Regime, be equal to the Trust Components of the Trust.

4.3 Limitation of liability

The Trustee has no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to an objection to the basis of attribution of the taxable income of the Trust under the AMIT Regime, including by the Member making a Member Objection Choice.

5 Trustee Indemnity

5.1 Trustee has a right to be indemnified for Tax payable

Each Member is required to indemnify the Trustee for:

- (a) any Tax payable by the Trustee as a result of the application of the AMIT Regime which the Trustee reasonably determines relates to the Member, Units held by the Member, or an attribution of taxable income made to the Member; and
- (b) any other costs, expenses or liabilities incurred by the Trustee as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under paragraph 5.1 of this Schedule 3 or under the AMIT Regime.

5.2 Trustee may prescribe terms and conditions

The Trustee may prescribe particular terms and conditions which apply in the event that the Trustee is entitled to be indemnified by a Member under paragraph 5.1 of this Schedule 3, or under the AMIT Regime.

5.3 Methods through which indemnity may be satisfied

The Members agree that the Trustee may, if it is entitled to be indemnified by a Member under paragraph 5.1 of this Schedule 3, or under the AMIT Regime undertake the following actions in order to satisfy that indemnity:

- (a) deduct from any amounts owing to the particular Member the aggregate of any amounts which the Trustee is entitled to be indemnified under paragraph 5.1 of this Schedule 3, or under the AMIT Regime; and
- (b) compulsorily redeem such number of units held by the Member which the Trustee reasonably determines is sufficient to cover the amounts for which the Trustee is entitled to be indemnified under paragraph 5.1 of this Schedule 3 or under the AMIT Regime.

Executed and delivered as a deed in Sydney.

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **PEP Gateway Co-investment Investors Administration Pty Limited**:

Director Signature

Director/Secretary Signature

Name of director (print)

Name of director/secretary (print)

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **PEP Gateway Management Pty Limited**:

Director Signature

Director/Secretary Signature

Name of director (print)

Name of director/secretary (print)